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WITH
PRACTICAL DIRECTIONS:
TOGETHER WITH
THE COPYHOLD ACT, 1894, FULLY ANNOTATED:
AND AN
APPENDIX OF FORMS; PRECEDENTS; STATUTES; &c.

BY
ARCHIBALD BROWN,
OF THE MIDDLE TEMPLE, ESQ., BARRISTER-AT-LAW;
*Editor of "Scriven on Copyholds," "Bainbridge on Mines," "Hunt on
Boundaries and Fences," &c., &c.*

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PREFACE

TO THE THIRD EDITION.



THE last edition of my Book on Enfranchisements having sold out, I have prepared a new edition of it.

In which new edition, I have embodied all the chief results of my own meanwhile experience relative to the specific subject-matters—being results which I thought might prove useful to practitioners; and I have added also some few details of a curious (but also useful) character.

A. BROWN.

3, STONE BUILDINGS,
LINCOLN'S INN, W.C.
March, 1903.



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COPYHOLD ENFRANCHISEMENT ACTS.

PART I.

The LAW of ENFRANCHISEMENTS (and incidentally, of COPYHOLDS), stated in a series of Chapters and under practical Headings.

INTRODUCTORY CHAPTER.

It is to be remembered, that copyhold lands are not merely held of the manor, but are also *parcel* of the manor. In the same way that lands in lease are still (subject only to the lease) the lands of the lessor, so copyhold lands (although they may be the fee simple of the copyholder) are still the lord's lands, subject only to the copyhold tenancy. The same remarks apply to customaryhold lands, and to lands commonly designated customary freeholds, all which are essentially copyhold lands (a).

On the other hand, the ancient freehold lands of a manor are lands which are merely *held* of the manor,

(a) *Doe d. Reay v. Huntingdon*, 4 East, 271.

but which are *not parcel* of the manor. These lands are not the lord's lands in any legal sense; at the most, he has but the seignory over such lands, with the rights incident to such seignory, *e.g.*, the right to some chief or quit rent, or to a heriot, or to an escheat, but he has nothing more. The same remarks apply to certain so-called customary freehold lands, but which in reality are ancient freehold lands held of the manor, subject to such heriot as aforesaid, with some customary incident annexed thereto, and which customary incident is in general a mere peculiarity annexed to the mode of the alienation of the lands (*b*).

For a due apprehension of the provisions of the earlier Copyhold Acts, 1841—1887, the distinction above taken required to be constantly borne in mind; and it still requires to be remembered in all dealings under the Copyhold Act, 1894; for while the provisions of the act relate (almost all of them) to copyhold and customaryhold lands, some few of these provisions relate exclusively to ancient freehold lands, and to those so-called customary freehold lands which are essentially ancient freehold lands. For example, in copyhold lands, the mines and minerals belong in general to the lord; but in ancient freehold lands, the mines and minerals belong in general to the ancient freeholder, and not to the lord. Therefore, where lands were enfranchised under the Copyhold Acts, 1841—1887, and the enfranchisement was wholly silent as regards mines and minerals, the provisions of sect. 48 of the Copyhold Act, 1852, to the effect that the enfranchisement was

(*b*) *Passingham v. Pitty*, 2 Jur. N. S. 837.

not to affect (among other things) the mines and minerals within or under the land enfranchised, did not necessarily make such mines and minerals the property of the lord, but left the ownership thereof as it was before the enfranchisement, that is to say, in the lord (if he was the owner thereof before), and in the tenant (if he was the owner thereof before). And similarly, now, where lands are enfranchised under the Copyhold Act, 1894, and the enfranchisement is wholly silent as regards the mines and minerals, the provisions of sect. 23 of the act, which are to the same effect as the provisions of sect. 48 of the Act of 1852, leave the ownership of, and rights in or to, the mines and minerals exactly as they were before the enfranchisement. It is true, that, upon an enfranchisement of copyhold lands, the copyholder may bargain with the lord to have the mines and minerals included,—and, in that case, the mines and minerals would be an item to be taken into account by the valuers in ascertaining the amount of the compensation to be paid to the lord as the consideration for the enfranchisement ; but the copyhold tenant may enfranchise without any such bargain ; and upon an enfranchisement of ancient freehold lands, the tenant would in no case require to bargain with the lord, or to pay him any consideration for such mines and minerals.

And again, as regards the timber on the enfranchised tenement,—the property therein is usually in the lord in the case of copyhold lands, the tenant having in general only certain limited rights therein ; but in ancient freehold lands, the timber is invariably the tenant's already. Therefore, under the earlier Copyhold

Acts, upon an enfranchisement of copyhold lands,—the lord's timber rights required to be valued in, seeing that (after the enfranchisement) the timber became the property of the tenant (*c*),—just as it also did, upon a commutation of copyholds effected under the earlier Copyhold Acts (*d*); but upon an enfranchisement of ancient freehold lands, the lord having no timber rights, nothing would have been valued in, on account thereof,—nor would now be valued in, upon an enfranchisement of ancient freehold lands under the Act of 1894. But as regards copyhold lands enfranchised under the Act of 1894, it being apparently the intention of sub-sect. 1 (*a*) of sect. 21 of that Act, that the timber shall, after the enfranchisement, belong absolutely and exclusively to the tenant (although there is no express provision to that effect contained in the act), the timber will require to be valued in, that is to say, the lord's timber rights (duly discounted by reference to the limited rights already existing in the tenant) will require to have a value put upon them, and such value will form an item of the compensation to be paid to the lord for the extinction of his timber rights resulting from the enfranchisement.

The distinction aforesaid, between copyhold land on the one hand and ancient freehold land on the other hand, required also to be borne in mind in determining the operative words in the deed of enfranchisement, or other the instrument by which the enfranchisement was to be effected; for in the case of copyhold land, the conveyance in the enfranchisement instrument would

(*c*) Act 1841, s. 81.

(*d*) Act 1841, s. 34.

be of the freehold corporeal hereditament vested in the lord ; while in the case of ancient freehold land, the conveyance in the enfranchisement instrument would be merely of the incorporeal seignory, with the incorporeal rights incident thereto. In other words, the enfranchisement of copyhold lands was by grant, conveyance, and release of the lands and corporeal hereditaments themselves ; but the enfranchisement of ancient freehold lands was by release or extinguishment merely of the incorporeal rights of the lord in or over the lands and corporeal hereditaments. And these last-mentioned distinctions still retain all (or nearly all) their old importance in enfranchisements effected under the Act of 1894.

Then, again, it should be premised, that, long before any Copyhold Act was passed, enfranchisements were in more or less common use ; and these enfranchisements were and still are commonly described as enfranchisements at the common law, apart from any enabling statute ; and the provisions regarding enfranchisements (and even those regarding commutations) contained in the earlier Copyhold Acts, were (and in fact in and by the acts themselves were expressed to be) cumulative (*e*) ; and the Act of 1894 also specifically enacts (*f*), that nothing in the act shall interfere with any enfranchisement that may be made independently of the act. And inasmuch as enfranchisements at the common law and enfranchisements under the Copyhold Act, and under certain other statutes hereinafter to be mentioned, are all of them still more or less in use,

(*e*) Act 1841, s. 83 ; Act 1852, s. 55.

(*f*) Act 1894, s. 95 (d).

and their modes and also their effects are different in very material respects, they cannot be either properly effected, or (being effected) they cannot be properly interpreted, or their true operation shown, unless the specific character of each is carefully observed.

In the present work, it is proposed, therefore, to consider the following species of enfranchisements, that is to say :—(1.) Enfranchisements at the common law, apart altogether from the Copyhold and other acts; (2.) Enfranchisements, whether voluntary or compulsory, under the Copyhold Act, 1894 (and under the special acts more or less incorporated with the Copyhold Act, and which relate respectively to Church lands, University and College lands, Crown lands, and lands held of the Duchy of Lancaster); and (3.) Enfranchisements, whether voluntary or compulsory, under particular statutes unconnected with the Copyhold Act.

Chapter I. will be devoted to enfranchisements at the common law,—apart altogether from the acts. And with a view to the due consideration of enfranchisements under the Copyhold Act, 1894, and under the other acts in that behalf applicable, it will be convenient (and conducive also to utility), if the matter be partitioned off according to the following scheme or disposition, that is to say :—

Chapter II. Enfranchisements in ordinary cases.

Sect. 1. Under the Copyhold Act, 1894.

Sub-sect. (1) Compulsory Enfranchisements.

Sub-sect. (2) Voluntary Enfranchisements.

Sub-sect. (3) Enfranchisements, the common incidents thereof, whether compulsory or voluntary.

Sect. 2. Under the other acts (*i.e.*, under acts other than the Copyhold Act, 1894).

Sub-sect. (1) Under the Land Tax Redemption Act, 1802.

Sub-sect. (2) Under the Lands Clauses Consolidation Act, 1845.

Sub-sect. (3) Under the Settled Estates Act, 1877.

Sub-sect. (4) Under the Settled Land Act, 1882.

Chapter III. Enfranchisements in Extraordinary Cases.

Sect. 1. Church Lands.

Sect. 2. University and College Lands.

Sect. 3. Crown Lands.

Sect. 4. Duchy of Lancaster Lands.

Sect. 5. Duchy of Cornwall Lands.

It will then be convenient, in Chapter IV., to treat of commutations under the earlier Copyhold Acts,—doing so, however, with the greatest possible brevity,—seeing that the Copyhold Act, 1894 (unlike the earlier Copyhold Acts), contains little or nothing regarding them, and appears to assume rather that they will not, in future, be resorted to; although why the act should have so assumed, it is difficult to understand.

And by way of conclusion, some observations of a useful practical character will then be given (in Chapter V.) under the heading of “Practical Directions as to Enfranchisements”; and these observations will be principally directed to the ascertainment of the enfranchisement consideration, that is to say, to the due valuation of all those incidents of tenure which are to be discharged by the enfranchisement, and which

therefore are to be included in the compensation which is to be paid by the enfranchising tenant to the enfranchising lord.

But before entering upon the consideration of these principal matters, it will be convenient to notice certain amendments in the law of copyholds, which were made by the Copyhold Act, 1841, and which have been repeated and maintained in the Copyhold Act, 1894, and certain further amendments made by other acts,—the amendments in question consisting principally in simplifications and facilities in and for the alienation of copyhold tenements. These amendments are as follows:—

(1.) Courts of equity may now decree a partition of copyholds, in the like cases in which and by the like order by which these courts may decree a partition of freehold lands (Act 1894, s. 87, continuing Act 1841, s. 85) (*g*).

(2.) Lords or stewards (and deputy stewards) may hold customary courts, although no copyhold tenant (or only one such tenant) is present thereat, and even although there be no copyhold tenant at all of the manor (Act 1894, s. 82, continuing Act 1841, s. 86)—but so nevertheless that, within one month thereafter, notice be served (upon the person whose right or interest may be affected thereby and who was not present at the court) of any proclamation made at the court. And the customary courts must be held and constituted with a full homage, according to the ancient

(*g*) *Burrell v. Dodd*, 3 Bos. & P. 378; *Horncastle v. Charlesworth*, 11 Sim. 315; *Bollon v. Ward*, 4 Ha. 530; *Jope v. Morshead*, 6 Beav. 213.

custom, in all cases in which the waste lands of the manor are to be dealt with at the court, and the consent of the homage is necessary to such dealings.

(3.) Grants of lands formerly held by copy and continuing to be grantable by copy may be made by the lord, or by the steward or deputy steward, out of the manor, and without holding any customary court (Act 1894, s. 83, continuing Act 1841, s. 67),—but so nevertheless that courts shall be duly held, according to the ancient custom in that behalf, for the grant of waste lands to be held by copy, where the consent of the homage is necessary to such grants. And regarding these last-mentioned grants, it will be seen hereafter that by sect. 81 of the Act 1894 (continuing sect. 6 of the Act 1887), the consent of the Board of Agriculture also is now required to such grants, and that on any such grant being made to hold by copy, the tenement comprised therein (although thereby expressed to be of copyhold tenure) becomes *instantly* a freehold tenement, as if it were thereby instantaneously enfranchised under the 1894 Act.

(4.) Admittances may be made by the lord, or by the steward or deputy-steward, out of the manor, and without holding any customary court (Act 1894, s. 84, continuing Act 1841, s. 88),—and even without any prior presentment by the homage of the devise, or surrender, or of other the fact or circumstance, in pursuance of which the admittance is made (Act 1894, s. 84, continuing Act 1841, s. 90).

(5.) Surrenders might be made out of the manor and without holding any customary court (Act 1841, s. 89); and may, *semble*, still be so made, although the

Act of 1894 does not specifically so provide; and all surrenders, or deeds of surrender, which the lord is compellable to accept (or which he in fact accepts),—and also all wills, copies of which are delivered to him either out of court or at a customary court (and if at a customary court, then although no homage is assembled thereat),—and also all such grants as aforesaid, and admittances as aforesaid, respectively made as aforesaid,—are to be entered on the court rolls (Act 1894, s. 85, continuing Act 1841, s. 89); and the entry so made is as valid as if it had been made in pursuance of a presentment by the homage of the surrender or deed of surrender, or of the will, or of the grant or admittance (Act 1894, s. 85, continuing Act 1841, s. 90),—the same fees and charges becoming payable for such entry as for an entry made upon a due presentment.

(6.) Licences (where a licence is necessary) for the alienation of the copyhold tenement or of part thereof by *devise* (*h*), sale, exchange, or mortgage, may be granted by the lord (or even by his steward duly authorized in that behalf in writing, but not otherwise); and upon every such licensed alienation of part only of the tenement, the lord apportiones the rent between the separated parts of the tenement, and each separated part thereupon becomes subject to its own apportioned part of such rent, and is thereafter dealt with as an original copyhold tenement subject to that apportioned rent as if it were the original rent therefor (Act 1894, s. 86, continuing Act 1841, s. 92). The licence must

(*h*) Evidently a mistake for *devise* (*i.e.*, Lease), the alienation by *devise* (*i.e.*, by Will) having been absolutely free since the 1 Vict. c. 26 (New Wills Act), s. 3.

be in writing ; and, once granted, it is entered on the court rolls. And note that, by virtue of the Settled Land Act, 1882, s. 14, the lord, although entitled for a limited estate only, *e.g.*, as tenant for life, may grant such licence to alienate, when the proposed alienation is by way of lease of the copyhold tenement, or of any part thereof ; but the lord's licence in that case is to be such as (and such only as) the licence, if it had been a lease of the manor, the Settled Land Act would have authorized the lord as tenant for life to make.

(7.) By the Wills Act (1 Vict. c. 26), ss. 3, 4, 5, continuing the provisions in this behalf of Preston's Act, 1815 (55 Geo. 3, c. 192), a surrender to the use of a will was rendered unnecessary ; and a surrenderee, although unadmitted, was enabled to devise the copyholds comprised in the surrender,—the same fines and fees and charges (and also the same stamps) being payable as would have been payable if there had been an actual surrender to the use of the will, and a due presentment and registration or enrolment thereof ; or as would have been payable if there had been an actual admittance of the unadmitted surrenderee, and a due surrender made by him thereafter, and the surrender had thereupon been duly presented and registered or enrolled.

(8.) By the Act 1894, s. 84, sub-s. 2 (continuing Act 1887, s. 2), a person claiming to be admitted as tenant may accept admittance by attorney,—the attorney being first duly appointed by him ; and the appointment may be either in writing or by word of mouth ; but, of course, it should always be in writing.

(9.) As regards trust estates and mortgage estates,

on the death, whether testate or intestate, of the last surviving trustee or mortgagee thereof, the legal estate in the copyholds (*i.e.*, the estate entitling and requiring the tenant to be admitted thereto on the court rolls) was, by the Conveyancing Act, 1881, s. 30, made to descend on his legal personal representative (*i*) ; but owing to such representative being in general a plurality of persons (whereby the lord's fine on admittance was augmented), the legal estate, it was latterly provided (Act 1887, s. 45), should not, and the Act of 1894, s. 88, provides, that (in effect) the legal estate shall not, in such cases, descend on the legal personal representative ; the legal estate in all such cases will, therefore, now devolve, either according to sect. 5 of the Vendor and Purchaser Act, 1874 (*Bare Trustee*), or according to sect. 48 of the Land Transfer Act, 1875 (*Bare Trustee Intestate*), whichever of these two sections shall be applicable to the case : and if neither of them shall be so applicable, then the descent will apparently be according to the law as it stood before these acts respectively came into force.

(10.) The tenant for life of copyholds, who sells or otherwise alienates same under the Settled Land Act, 1882, may, by sect. 20 of that act, convey the customary fee simple by deed, so as to confer on the purchaser an admittable estate (*k*) ; and such a deed would be in the nature of the "*deed of surrender*" which is referred to in sect. 85 of the Act of 1894.

(11.) A married woman, unless she is acting as an *executrix* only (Married Women's Property Act, 1882,

(*i*) *In re Mills' Trusts*, 37 Ch. Div. 312 ; 40 Ch. Div. 14.

(*k*) *In re Naylor and Spendla's Contract*, 34 Ch. Div. 217.

s. 24), or is a mere *bare trustee* (Trustee Act, 1898, s. 16), must still be examined separately from her husband, if she would convey a copyhold by surrender (*l*),—*scil.*, where she is not herself the beneficial owner of it, for her sole and separate use; or where she is not a mere mortgagee thereof (*m*).

(*l*) *In re Harkness and Allsopp's Contract*, (1896) 2 Ch. 358.

(*m*) *In re Brooke and Fremlin's Contract*, (1898) 1 Ch. 647.

CHAPTER I.

ENFRANCHISEMENTS AT THE COMMON LAW.

AN enfranchisement may be effected by any lord entitled to the manor in fee simple, or who has a power to enfranchise, or a power of sale and exchange which includes in it a power to enfranchise (*a*). The copyholder need not be entitled to his copyhold tenement in customary fee simple; but if entitled for a limited estate, any enfranchisement which he may accept will enure for the benefit not of himself alone, but for the benefit of himself and of all others entitled in remainder or reversion (*b*). A copyholder entitled in tail who accepts an enfranchisement thereby bars the issue in tail (*c*), and also all remaindermen and reversioners (*d*); so that in such a case the enfranchisement would enure for his own sole benefit.

Under the Settled Land Act, 1882 (*e*), a lord entitled for life only may (if entitled in possession) effect an enfranchisement, but subject to the provisions of that act, so that such an enfranchisement is really a

(*a*) Dart, V. & P. 4th ed. p. 70; 6th ed. p. 89.

(*b*) *Wynne v. Cookes*, 1 Bro. C. C. 515; *Roe d. Clemett v. Briggs*, 16 East, 406.

(*c*) *Parker v. Turner*, 1 Vern. 393; *Dunn v. Green*, 3 P. Wms. 8.

(*d*) *Challoner v. Marshall*, 2 Ves. 524; 3 Ves. 127; 4 East, 283.

(*e*) 45 & 46 Vict. c. 38, s. 3.

statutory and not a common law enfranchisement. And the like observation applies to that immediate enfranchisement which now results and arises, under sect. 81 of the Copyhold Act, 1894 (formerly sect. 6 of the Copyhold Act, 1887), upon any grant of the manorial waste lawfully made by the lord—which grants he may not now lawfully make, even with the full consent of the homage, unless he obtain also the consent of the Board of Agriculture to the grant—the grants lastly referred to being now placed (in effect) upon the same footing as the lord's common law grants in the nature of, and by way of, inclosure of the waste,—all which last-mentioned grants always were of freehold tenure, and lords might (under the Statutes of Merton and of Westminster) have freely made such common law grants of the waste, subject only to the restrictions in that behalf imposed by the acts (*f*); but the Commons Act, 1876 (*g*), the relevant provisions of which are set forth in the Appendix to this treatise, has now imposed certain further restrictions upon these common law grants (otherwise called improvements) of the waste; and the considerations which are thereby prescribed are also to weigh with the Board of Agriculture when they consent to the before-mentioned copyhold grants of the waste.

Upon every common law enfranchisement, the lord's title ought, strictly speaking, and for the reasons herein appearing, to be investigated; and on any subsequent dealing with the lands so enfranchised, that title would, in general, still require to be shown, unless guarded

(*f*) Scriven, 7th ed., by Brown, pp. 380—381, 388—389.

(*g*) 39 & 40 Vict. c. 56.

against by special conditions of sale in the case of a sale, or by some other special condition or provision in the case of other dealings with the lands, *e.g.*, by mortgage or the like; but as regards sales, the Conveyancing Act, 1881 (*h*), s. 3, has now provided, that, under an open contract for the sale of enfranchised lands, the purchaser shall not be entitled to call for the title to make the enfranchisement.

Also, upon every common law enfranchisement, the mortgages or other incumbrances affecting the lord's title to the manor would (as the result of the enfranchisement) become charges on the enfranchised copyhold; and by way of ensuring some measure of protection against such incumbrances, the copyholder, in the case of a common law enfranchisement, used to create, and still would create—with the lord's licence—a long term of years in his copyhold tenement, previously to accepting the enfranchisement (*i*),—a burdensome but necessary complication of his title.

The enfranchisement being a conversion of the copyhold tenement into freehold, it is to be effected,—that is to say, completed,—either (1) By a common law conveyance of the fee simple of the tenement to the copyholder, either by the lord of the manor, or by a stranger to whom the lord has previously conveyed the freehold of such tenement (*k*); or (2) By the lord, or such freeholder as aforesaid, releasing to the copyhold tenant all the seignorial rights. The former

(*h*) 44 & 45 Vict. c. 41.

(*i*) See *Lease for Long Term, by Licence*, in Part III., Appendix of Forms, Precedents, Statutes, &c., hereunder.

(*k*) *Lane's case*, 2 Co. 16 b.

method is the better one, as the copyhold is more properly enlarged into an estate of freehold by a conveyance of the lord's reversionary interest (*l*), than by a mere release of his seignoral rights. Should the lord release merely the quit rent or any specific service or specific seignoral right, that release would operate as an extinction only of the particular incident released, and not as an enfranchisement (*m*); it would, in fact, if for value, amount to a commutation simply, of the manorial incident released.

The conveyance by way of enfranchisement should always be taken to the copyholder himself, and not to a trustee for him; for in the latter case, the copyhold interest would, strictly speaking, continue to subsist (*n*). Various forms of enfranchisement deeds at the common law, and apart from statute, will be found in Part III. hereunder, most of these enfranchisement deeds being of a simple character, and only one of them being of a complex character.

In all enfranchisement deeds at common law, the mines pass to the enfranchising copyholder, unless they are expressly reserved thereout; and when expressly reserved, there should also be reserved and granted to the lord all such rights (enumerating them specifically) of winning and working and carrying away the minerals (paying or not paying, according as may be agreed, compensation for damage) as will effectively enable the lord to work the mines profitably (*o*).

(*l*) *Samme's case*, 13 Co. 55.

(*m*) *Fawlkner v. Fawlkner*, 1 Vern. 21.

(*n*) *Howard v. Bartlett*, Hob. 181; Cro. Jac. 573.

(*o*) *Wickham v. Hawker*, 7 Mee. & W. 63.

Rights of common in the waste of the manor are extinguished by a common law enfranchisement (*p*), and should therefore be specifically preserved to the copyholder by a re-grant thereof (*q*); for a mere grant of the *appurtenances* to the copyhold will not operate as a re-grant of such rights of common (*r*). However, the extinguishment is said to be at law only, and not also in equity (*s*); also, rights of common in waste lands out of the manor are not lost by such enfranchisements; for these latter rights belong to the copyholder's land, and not to his estate (*t*); also, a right of way over another's copyhold would remain (*u*); also, a way of necessity would not be extinguished by the enfranchisement (*x*).

Since the statute of *Quia Emptores* (18 Edw. 1, c. 1), the ancient services rendered by a copyholder to the lord cannot be reserved on the enfranchisement; and any rents, therefore, which may purport to be reserved in or by the enfranchisement deed will be rents upon contract, or by way of rent-charge, and not of rent-service (*y*); and after the enfranchisement, the copyhold or customary tenement becomes frank-free; and the frank-tenement or freehold appears necessarily to be

(*p*) *Bradshaw v. Eyre*, Cro. Eliz. 570; *Marsham v. Hunter*, Cro. Jac. 253.

(*q*) *Doidge v. Carpenter*, 6 Maul. & Sel. 49.

(*r*) *Bradshaw v. Eyre*, *supra*; *Marsham v. Hunter*, *supra*.

(*s*) *Styant v. Staker*, 2 Vern. 250.

(*t*) *Tyrringham's case*, 4 Co. 38 a; *Crowder v. Oldfield*, 6 Mod. 19.

(*u*) *Empson v. Williamson*, 1 Roll. Abr. 933.

(*x*) *Clark v. Cogge*, Cro. Jac. 170.

(*y*) *Bradshaw v. Lawson*, 4 T. R. 443; *Doe d. Reay v. Huntingdon*, 4 East, 271, 290.

held of the lord above, and not of the enfranchising lord (z)—in which particular, also, a common law enfranchisement is distinguished from an enfranchisement effected under the Copyhold Act, 1887, or now under the Copyhold Act, 1824.

It has been made a question, whether a common law enfranchisement will not, under certain circumstances, be presumed. And it appears, that no presumption of an enfranchisement will arise from any mere conveyance of the copyhold hereditament by a freehold assurance,—or even by a long succession of freehold assurances (a); nor will such presumption arise from the mere negligence of the lord to exact from his copyhold tenant the quit rents payable (b), or to enforce other the incidents of tenure; but where other circumstances concur with such neglect on the lord's part, *e.g.*, where the ancient rent has been superseded by some new payment in the nature of rent (c), the court may, in such a case, presume an enfranchisement, or (at all events) a partial enfranchisement in the nature of a commutation.

But it having now been decided that a copyhold quit rent (d), equally with a freehold quit rent (e), is wholly barred, and the lord's title thereto extinguished under the Statutes of Limitation, by non-payment for twelve

(z) Dy. 359 b, pl. 1.

(a) *Doe d. North v. Webber*, 3 Bing. N. C. 922; *Beighton v. Beighton*, *infra*; also, *Pickett v. Packham*, L. R. 4 Ch. App. 190.

(b) *Turner v. West Bromwich Union*, 9 W. R. 155; 3 L. T. N. S. 662.

(c) *Doe d. Johnson v. Ireland*, 11 East, 280; *Steward v. Bridges*, 2 Vern. 517.

(d) *Hovitt v. Earl of Harrington*, (1893) 2 Ch. 497.

(e) *Owen v. De Beauvoir*, 16 Mee. & W. 547.

years, it seems to follow, that partial enfranchisements at the common law may now arise by the effect of such non-payment of rent, or by the neglect on the tenant's part of other the customary services for which a distress might be made; and the law being that seisin of the quit rent is seisin of all the other services (even of the casual services, such as heriots, reliefs, &c. (*f*),—disseisin being co-extensive, in general, with seisin (*g*),—it might be fairly argued, that if the quit rent is barred, the casual services (*e.g.*, heriot service) are also barred, —even although heriot custom would not, in such a case, be barred (*h*),—the disseisin of the rent being (it might be said) a disseisin also of all the casual services, although not of the *customary* casualties.

Also, the courts having recently decided (*i*) that, after an implied admittance of the tenant through the receipt of the quit rents from him as tenant, the lord cannot seize *quousque* to enforce him to come forward and expressly claim to be entered as tenant on the court roll,—if the lord do not forthwith, within six years from such implied admittance, enter the tenant on the court rolls and deliver him copy of this admittance, so as thereupon to become entitled (for until then the lord is not entitled) (*k*) to sue for his fine on the admittance, it would follow that the lord would be barred of his fine for that admittance:

(*f*) 1 Inst. 68 *b*, 151 *a*; *Bevil's case*, 4 Rep. 8 *a*, 10 *b*.

(*g*) Wms. on Seisin, p. 7; *Leach v. Jay*, 9 Ch. Div. 42.

(*h*) *Chichester v. Hall*, 17 L. T. J. 121; *Zouche v. Dalbiac*, L. R. 10 Exch. 172.

(*i*) *Ecclesiastical Commissioners v. Parr*, (1894) 2 Q. B. 420. But see *Reg. v. Dullingham Manor*, 8 A. & E. 858.

(*k*) *Hayward v. Raw*, 6 H. & N. 308.

So that, by these piecemeal or partial losses successively happening to the lord (through the lord's neglect and the chicanery of tenants), there arises what is (in effect) an enfranchisement,—only the bare copyhold tenure remaining (*l*), but all (or most) of the fruits and incidents thereof having been lost by time. And if all the *services* were lost, even the tenure itself would, *semble*, be lost,—each particular tenure consisting merely of the *fasciculus* of services incident to that tenure (*m*).

In the practical conduct of a common law enfranchisement, the following brief observations and directions will be found serviceable :—

First of all, the preliminary agreement to enfranchise must be negotiated, and prepared and settled, precisely as if it were a contract for the sale and purchase of lands. For although no formal contract for the enfranchisement need be prepared in a simple case,—still an agreement of some sort must, even in the simplest case, be entered into ; for this species of enfranchisement is, *ex hypothesi*, by agreement only. And unless where considerations of expense deter the parties from entering into, or other sufficient considerations induce them to dispense with, a formal preliminary agreement, such formal agreement should in all cases be first entered into. And in every contract for enfranchisement, the lord is in the position of a vendor, and the tenant is in the position of the purchaser under him. Consequently, the agreement must provide with reference to the lord's

(*l*) *Dimes v. Grand Junction Canal Co.*, 9 Q. B. 469 ; 3 H. L. Cas. 794 ; *Beighton v. Beighton*, 13 R. 145.

(*m*) 1 Inst. 1 b ; *Anthony Lowe's case*, 9 Rep. 122 b.

title,—the abstract thereof which is to be delivered, and in particular what document shall be made the root of title, and what requisitions and objections shall be excluded, and within what time the requisitions and objections (if any) are to be made which, having regard to the terms of the agreement, are open to be made and can legitimately be made. Or the contract may be left open in these particulars; and in that case, it will be governed by the provisions in this behalf, contained in the Vendor and Purchaser Act, 1874 (*n*), s. 1, and in the Conveyancing Act, 1881, s. 3, whereby, respectively, a forty years' abstract of title must be given, but divers restrictions are imposed on the requisitions and objections which would otherwise have been open to be taken or made upon the title.

It is true that an enfranchising tenant may often, and with entire safety, accept the lord's title without requiring any abstract of it or making any investigation of it; and this will happen where, as in the case of lords who are great landowners, the title has come to be generally known in the locality, and to be accepted without investigation even in the case of ordinary sales and purchases. And in such cases, no subsequent inconvenience arises; for once the enfranchisement is completed, it is not now required of the enfranchising tenant that he should, on any subsequent sale of the enfranchised tenement, produce the lord's title to make the enfranchisement (*o*). And although that necessity continues if the tenant should desire to mortgage the

(*n*) 37 & 38 Vict. c. 78.

(*o*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3, sub-s. 2; and see *Kerr v. Pawson*, 25 Beav. 394.

enfranchised tenement, still (in these cases of a known and accepted title) no serious difficulty arises.

It must be known and remembered, however, that upon every enfranchisement effected at the common law, the title to the enfranchised tenement is, after the enfranchisement thereof, the old freehold title of the lord,—and is subject to all (if any) the defects in, and charges or incumbrances on, the lord's title. And it is therefore satisfactory in all cases (unless where the expense would be out of all proportion to the value of the tenement) to require an abstract of, and to strictly investigate, the lord's title; so that, in subsequent dealings with the enfranchised tenement, there is the comfort of knowing that the freehold title is good, and that in making the enfranchisement deed the root of title, and excluding all inquiries upon the earlier freehold title, one is acting with all due fairness towards the subsequent purchaser or mortgagee; and it was, assuredly, not the intention of the Conveyancing Act, 1881, when it exempted vendors of enfranchised copyholds from the duty of showing the lord's freehold title, to encourage the original enfranchising tenant to neglect altogether, or to make a mere slipshod or slovenly investigation of, the title to the freehold. Nor is it, in the general case, safe to accept the lord's title blindfold (*p*).

Certain it is, that if the lord's freehold title is not free from incumbrances, the enfranchising tenant should not further proceed with his proposed enfranchisement by the common law, until at least the lord's

title is cleared of all incumbrances, or unless the incumbrancers will concur in the enfranchisement deed to release their incumbrances or charges. And it will, in many cases, happen that the incumbrancers cannot (or will not) concur to release their charges; and it will rarely or never happen to be either convenient or practicable to have recourse, in such cases, to the provisions of the Conveyancing Act, 1881 (*q*), for the involuntary discharge of these incumbrances by making some sufficient substituted security therefor. And the old expedient (which may, of course, still be resorted to) of creating, with the lord's licence,—or, *semble*, without the lord's licence,—a long term of years in the copyhold tenement before the enfranchisement thereof, and thereafter accepting the enfranchisement subject to such long term of years, is fraught with inconvenience. And in the result, therefore, the enfranchising tenant will be well advised, in all cases of difficulty over the lord's title, to abandon altogether the proposed enfranchisement, and to begin *de novo* under the Copyhold Act, 1894,—an enfranchisement under that act (as under the earlier Copyhold Acts) being free from all these inconveniences, perplexities, and dangers, as will hereafter more particularly appear.

Assuming, however, that the enfranchisement by the common law can proceed,—which the lord (by his steward and solicitor) ought beforehand to know,—then the parties may proceed with the agreement to enfranchise. And the second important matter to

(*q*) 44 & 45 Vict. c. 41, s. 5.

pursue is, the ascertainment of the compensation which is to be paid to the lord as the consideration for the enfranchisement; and the preliminary agreement will either specify the amount of this compensation (*e.g.*, where it has been, as in simple cases it may be, agreed beforehand), or else will provide some machinery for the due ascertainment of the amount; and the machinery which it is most usual to adopt is, the employment of some land surveyor or valuer (of skill and good repute) in whom (*i.e.*, in his fairness and integrity) the lord and the tenant have mutual confidence; failing which, two surveyors or valuers (one to be appointed by the lord, and the other by the tenant) will settle the amount, or (in case of their failure to do so) the umpire they have chosen will settle it.

The divers matters which the valuer or (as the case may be) the valuers or their umpire will take into account, and include in their valuation, will, of course, be, all those incidents of tenure which the enfranchisement will extinguish,—that is to say, the value thereof to the lord, or the amount of the loss resulting to the lord from their extinction. Also, if the mines and minerals are to be included (and unless they are expressly excluded, they will be included) in the enfranchisement (being an enfranchisement by the common law), the value of such mines and minerals to the lord must also be valued in; and among the incidents of tenure to be valued, the lord's right of escheat will also be included, for the lord cannot (by the common law) grant the freehold to hold of himself,—this being contrary to the express provisions

of the statute *Quia Emptores* (r); in which two last-mentioned particulars, the common law enfranchisement differs (it will be remembered) from the enfranchisements effected under the Copyhold Act, 1894, or which have been effected under the earlier Copyhold Acts.

The valuers will, of course, arrive at a true valuation of each incident of tenure, and will make a distinct valuation of each, and then will aggregate the several amounts; and the aggregate amount so arrived at will be the enfranchisement consideration.

The preliminary agreement ought also to provide for the compensation to be paid for the partial extinction of the stewardship which results from the enfranchisement,—this latter compensation being payable to the steward himself, unless when the lord (as will sometimes happen) is his own steward. For the stewardship, although an office, is also a hereditament (s),—and this compensation to the steward is in respect of his loss of future fees and incidental emoluments, and is, therefore, additional to any fees (and incidental charges) which the steward may lawfully be entitled to for and in respect of the enfranchisement,—its completion and enrolment.

And without pursuing further in this place (for it will be more convenient hereafter, in connection with statutory enfranchisements, to pursue) this matter of the ascertainment of the enfranchisement consideration, it will be convenient to assume that the lord's title has

(r) 18 Edw. 1, c. 1.

(s) Challis R. P., 2nd ed. pp. 45, 46; *Earl of Shrewsbury's case*, 4 Rep. 42 b.

been accepted, and that the enfranchisement consideration has been ascertained ; and thereupon the enfranchisement proceeds to completion in the following manner, that is to say :—

The steward prepares the draft of the necessary deed for carrying through the proposed enfranchisement ; and such draft is sent to the solicitor for the enfranchising tenant for perusal and approval by the latter,—and, of course, he may make any alterations in the draft which appear to him, under the circumstances, to be desirable and proper ; and these alterations of his having been afterwards (with or without some agreed modifications) accepted or assented to by the steward, the draft is then fair-copied and engrossed ; and the engrossment will be executed in like manner as if it were an ordinary purchase deed,—the enfranchisement consideration being, of course, first paid, or else otherwise secured or provided for. And the steward retains the engrossment as executed, and procures it to be duly stamped ; and he then enters it (that is to say, enrolls it) on the court rolls : after which, and upon payment of his fees and charges (including the stamp duty), for all which he has a lien on the enfranchisement deed until payment (t), he delivers the enfranchisement deed to the tenant ; and the matter is thereupon complete.

(t) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 68.

CHAPTER II.

ENFRANCHISEMENTS IN ORDINARY CASES.

SECT. I.—*Under the Copyhold Act, 1894.*

SECT. II.—*Under Acts other than the Copyhold Act, 1894.*

SECT. I.—ENFRANCHISEMENTS UNDER THE COPYHOLD ACT, 1894.

It has been already stated (*a*), that the provisions of the Copyhold Act, 1894, like those of the earlier Copyhold Acts, 1841—1887, relating to enfranchisements, are cumulative (Act 1841, s. 83; Act 1852, s. 55; Act 1894, s. 95 (d)); and the powers conferred thereby of effecting enfranchisements are in excess of the powers which the lord and his tenants could themselves respectively, and apart from these enabling acts, have exercised; and it follows that, as in all cases of powers conferred only by statute, the powers of enfranchisement (with the provisions incidental thereto) contained in the Copyhold Act, 1894, must be strictly pursued, and complied with, on the parts of both lords and tenants, in the enfranchisements effected under the

(*a*) *Supra*, p. 5.

act; and this consideration necessitates an accurate knowledge of the provisions of the act.

But inasmuch as the proceedings for enfranchisement under the act are conducted (more or less) under the direction, and the enfranchisement is effected with the sanction, of the Board of Agriculture, it is fitting to premise that the Board of Agriculture is a body first constituted and incorporated by the Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30), with a distinctive seal (sect. 6); and the board, in the execution of all powers and duties transferred to it, is required to use the style and seal of the Board of Agriculture, and no other. And by the second section of the act, there were transferred to the board (among other powers) the powers and duties of the Land Commissioners for England, under (among other acts specified in the First Schedule to the Act, Part II.) the Copyhold Acts, 1841—1887; and by the ninth section of the act, there were transferred and attached to the board (among other officials) all officials employed under (that is to say, in the office of) the Land Commissioners for England; and the board was authorized to distribute the business of the board among those officials, as the board might think fit; and (by sect. 10) the office of the Land Commissioners ceased on the establishment of the board.

Now the Land Commissioners for England were a body of men first constituted and incorporated, under that style or title, by the Settled Land Act, 1882 (*b*), it having been provided (by sect. 48 of that act) that

(*b*) 45 & 46 Vict. c. 38.

the commissioners theretofore bearing the three several styles of the Inclosure Commissioners, the Copyhold Commissioners, and the Tithe Commissioners, should, by virtue of the act, become and be styled the Land Commissioners, and should use that style, together with the official seal of the Land Commissioners, and no other style or seal, in the execution and discharge of every power and duty thereby vested in them. And it remains therefore to inquire—who were the Copyhold Commissioners?

The Copyhold Commissioners were a body of commissioners constituted and incorporated by the Copyhold Act, 1841 (s. 1); and each commissioner on his appointment was required to make the prescribed declaration of fidelity (Act 1841, s. 9), or a declaration to the like effect; and his appointment was duly gazetted (Act 1841, s. 9). The number of the commissioners as originally appointed was not to exceed three (Act 1841, s. 1); and they or any two of them sitting together constituted a board of commissioners for carrying the Copyhold Acts into execution (Act 1841, s. 2). There were also assistant commissioners, who (subject to the control of the commissioners) exercised such of the powers of the commissioners as were delegated to them by the commissioners, under the limited power of delegation given to the commissioners (Act 1841, s. 10), such delegates' powers not extending to include the power to confirm agreements, awards, or apportionments; or the power to frame forms of agreement and other instruments; or the power, generally, to do acts which the commissioners were, by the Copyhold Acts, expressly required to do

themselves; but the acts of the assistant commissioners, so far as they fell within the powers lawfully delegated to them, were as effective as the acts of the commissioners themselves (Act 1841, s. 10). The commissioners had a board seal, and therewith they sealed or stamped all agreements and awards or apportionments confirmed by them (Act 1841, s. 2); and every document so sealed or stamped, or any sealed or stamped copy thereof, was made evidence (Act 1841, s. 2); and the seal was necessary to the validity of every such document (Act 1841, s. 2); also, all orders made by the commissioners were to be sealed with the seal of the board, and the seal made them evidence without further proof thereof (Act 1841, s. 2; Act 1852, s. 49). The commissioners had a scale of fees to be taken in the office; and these fees were taken by stamps (c); and the commissioners had a lien for such fees, on all documents requiring to be delivered out of the office, as against the party requesting such delivery (Act 1887, s. 34) (c); and they had a lien also, for their expenses generally of and incident to all enfranchisement proceedings, on all documents requiring to be delivered out of their office, as against either party desiring to have delivery of such documents (Act 1887, s. 34),—and this in addition to their lien for the office fees aforesaid.

Under the provisions of the Copyhold Act, 1894 (s. 90), the Board of Agriculture is constituted (or continued as) the authority for the execution of the Act; and (by sect. 91) the board may delegate to any of its officers any of the powers of the board under the

(c) And see the Copyhold, &c. Acts (Commissioners' Costs) Act, 1868, being No. 8 of Statutes in Part III. hereunder.

act, save only the power to confirm agreements or awards, or to frame forms, or to do any act which, by the act itself, is required to be done under the seal of the board ; and the powers which may be so delegated are to be exercised subject to such regulations as the board may direct ; and the board has full power to recall or to modify or alter any powers that shall have been so delegated, and no such delegation (even while it is unrecalled) interferes with the board itself executing any of the delegated powers. Nevertheless, the acts of the delegate, being acts within the powers so lawfully delegated to him, are effective, and are to be obeyed equally with the acts of the board itself ; and (by sect. 98) no one is to obstruct or hinder (under a penalty of 5*l.* for so doing) any officer of the board, or any member of the board, or any valuer or umpire, in his lawful execution of the powers of the act.

Having now made these preliminary observations regarding the Board of Agriculture (and the department thereof which is still called the Copyhold Department), it is now time to proceed with the subject of enfranchisements under the Act of 1894,—considering, first, those which are compulsory, and, secondly, those which are voluntary ; and then afterwards proceeding to consider the incidents which are common to both.

Sub-sect. (1). *Compulsory Enfranchisements.*

The Right to Compel.—Any tenant of copyhold land, who is an admitted tenant,—no matter what may be the date of his admittance,—may compel and require an

enfranchisement, or may be compelled and required by the lord to accept an enfranchisement (sect. 1), of his copyhold land (sect. 1); and the term enfranchisement, as defined by the act (sect. 94), extends to include the discharge of freehold lands from heriots and other manorial rights; and as regards such freehold lands, the tenant thereof is, in respect thereof, put on the same footing as the admitted tenant of copyhold lands is put in respect of his copyhold lands (sect. 2), that is to say,—the lord may require either of them to accept an enfranchisement, and either of them may, in general, require and compel the lord to grant the enfranchisement; but (in the exceptional cases following) neither of them, save upon the conditions following, may require or may compel an enfranchisement, that is to say:—

The admitted copyholder,—in case no admittance to the copyhold has been made since the 30th June, 1853,—must first pay, or at all events tender,—to the lord the amount which (on an admittance since that day) would have been payable, in respect of fines and heriots, by an alienee of the copyholds, and to the steward two-thirds of his fees and charges on such admittance (sect. 3 (a)); and the ancient freeholder,—in case no heriot (the lands being heriotable) has become due or payable since the 30th June, 1853,—must first pay, or at all events tender,—to the lord the amount which (on an enrolment since that day) would have been payable, in respect of heriots, by an alienee of the freeholds, and to the steward two-thirds of his fees and charges on such enrolment (sect. 3 (b)). And in all other cases, that is to say, where there has been an admittance or enrolment since the 30th June, 1853, then the full

amount (remaining unpaid) of the fines and fees consequent on the last admittance [or enrolment] must be first paid, or at all events tendered (sect. 3 (c)),—save, *semble*, where such fines and fees are barred by time (sect. 95 (c)).

The Lord who may Compel or be Compelled.—For the purposes of any compulsory enfranchisement, the lord may be either seised of the manor for his own life only, or, *semble*, for any other life or lives, or seised in fee-tail or in fee simple (sect. 94); and he need not, whatever his estate, have any power to sell the manor (sect. 94); and he need not be lawfully entitled to the manor (sect. 94); but if, for the time being, he fills the character of lord, that will suffice (sect. 94); or if, for the time being, he is acting as lord, that also will suffice (sect. 94). The lord may be either an individual or a body corporate (sect. 94), or collegiate (sect. 94); and ecclesiastical lords seised in right of the church or seised in any other right (sect. 94), and lords farmers holding under them (that is to say, the lessees of such ecclesiastical lords), are also lords, for the purposes of a compulsory enfranchisement (sect. 94).

The Tenant who may Compel or be Compelled.—In the case of copyholds, it is the admitted tenant, and in the case of ancient freeholds, it is the tenant, who may compel or be compelled. But, *semble*, the tenant must, in either case, be the tenant on the court roll—so that, in the case of copyholds, an admittance implied from the receipt of rent would not suffice, unless and until the admittance had been (but apparently the steward

may cause such implied admittance to be) duly entered on the court roll (*d*) ; and in the case of ancient freeholds (the custom being as regards these not to admit at all, in any proper sense of the word admit, but merely to enrol the tenant on the roll), the tenant must have been enrolled. Subject to that, the tenant may, as regards either copyholds or ancient freeholds, be either a tenant in fee simple, or (where entails are permitted) a tenant in fee-tail, or a tenant for his own life or for any other life, or a tenant for lives or for years ; or may be two or more persons holding (*i.e.*, entitled) *successive* ; or may (in the case of lands held in undivided shares) be the owner of two-thirds in value (sect. 94). And it is required, in all cases, that the tenant shall be in present possession or in actual receipt of the rents and profits ; but even a mortgagee who is in such possession or receipt—where he is a mortgagee of the copyholds by surrender—may compel or be compelled as the tenant (sect. 94), although otherwise such mortgagee would not be the tenant (sect. 1).

The Notice to Enfranchise.—The first step in a compulsory enfranchisement (and that which gives it its name) is the notice given by the lord to the tenant requiring him to accept an enfranchisement ; or (as the case may be) the notice given by the tenant to the lord requiring and compelling him to make an enfranchisement (sect. 4). Two forms of the specified notice are

(*d*) *Wilson v. Allen*, 1 Jac. & W. 611 ; *Ecclesiastical Commissioners v. Parr*, (1894) 2 Q. B. 420 ; but see *Hayward v. Raw*, 6 H. & N. 308.

given in the Appendix hereunder,—being the official forms numbered respectively 1 and 2 in the “Official Forms,”—and the first of these two forms being applicable to copyholds, and the second of them to ancient freeholds. So soon as the notice is given (that is to say, served), a copy of it is to be forwarded to the Board of Agriculture; and the copy so sent must be indorsed with a statement, of the time and mode of service of the original notice. The notice here referred to as prescribed by sect. 4 of the act is, of course a wholly different notice to that prescribed by sect. 42.

Enfranchisement Consideration, Ascertainment of.—The parties to the enfranchisement (that is to say, the lord and the tenant) may themselves (with the sanction of the Board of Agriculture) agree, in writing, the amount of the compensation to be paid (or to become payable) for the enfranchisement (sect. 5, sub-sect. 2); or they may (by agreement in writing) leave it simply to be ascertained by the Board of Agriculture (sect. 5, sub-sect. 2); and a form of such last-mentioned agreement is contained among (and is No. 3 of) the official forms set forth in the Appendix hereunder. But, in lieu of either of these modes of proceeding, the lord and the tenant may ascertain the enfranchisement consideration by valuation, and this third mode of proceeding is in all cases to be adopted, failing the other two.

The matters to be taken into consideration in ascertaining the price to be paid for the enfranchisement are, of course, all the incidents of tenure, the benefit of which will, upon the enfranchisement and by the effect thereof,

be lost to the lord ; and all these matters will be (at least, ought to be) taken into account, even where the parties themselves agree the amount of the compensation, or leave it to be ascertained by the Board of Agriculture. And the act expressly provides (sect. 6), that where the enfranchisement consideration is being ascertained by valuation, the matters to be taken into account, and duly allowed for, in the valuation, shall be as follows :—

- (1) The facilities for improvement ;
- (2) The customs of the manor ;
- (3) Fines ;
- (4) Heriots ;
- (5) Reliefs ;
- (6) Quit rents or chief rents ;
- (7) Forfeitures ; and
- (8) All other incidents of tenure ; and
- (9) All other circumstances affecting or relating to the tenement or tenements ; and
- (10) All advantages to arise from the enfranchisement,—escheats only not being valued in.

And all the ten subject-matters aforesaid are respectively to be valued as at the date of the notice requiring the enfranchisement (sect. 6, sub-sect. 2) ; and the value thereof is to be stated at a gross sum of money (sect. 7).

In case the enfranchisement consideration (not having been agreed by the parties as aforesaid, and not having been agreed by them to be left to the Board of Agriculture) shall have become ascertainable by valuation as aforesaid, then if the proceeding by valuation fails from any cause, the Board of Agriculture will (on due notice

given to the lord and tenant) ascertain the enfranchisement consideration (sect. 8).

Valuers, Appointment of.—Where the rateable value (as ascertained by the actual poor law rating) of the tenement or tenements comprised in the notice to enfranchise, is of the annual value of 30*l.* only—or of less annual value (sect. 5, sub-sect. 2),—or where the only matters to be taken into account, and allowed for, in the valuation for enfranchisement are (or consist of) heriots, quit rents, or chief rents, and licences (at fixed rates) to lease or to cut timber,—there is to be only one valuer, and he is to be appointed by the justices in petty sessions for the division or place in which the manor (or the greater part of it) is situate (sect. 5, sub-sect. 2), the lord of the manor (if a justice) taking, of course, no part in the appointment (sect. 5, sub-sect. 3).

However, even in these two cases, either the lord or the tenant may (subject to paying the additional costs occasioned thereby) insist upon the mode of valuation nextly mentioned, and being the mode of valuation which is to be adopted in all cases where the net rateable annual value exceeds 30*l.*, that is to say :—

Where the net rateable annual value exceeds 30*l.*,—the lord and tenant may jointly appoint one valuer (see Official Form, No. 4); or the lord may appoint one valuer, and the tenant another (see Official Form, No. 5); and if either of them appoints a valuer, and the other of them does not do so, and (for twenty-eight days after notice to appoint (Official Form, No. 6)) fails to make the appointment,—not having meanwhile

obtained from the Board of Agriculture an extension of the time within which he may make the appointment (see Official Form, No. 8),—the Board of Agriculture appoints the second valuer (sect. 5, sub-sect. 4) (Official Form, No. 9).

The appointment of a valuer, once the appointment is made, by either lord or tenant, cannot (save with the consent of the other party) be revoked; but on the application of either of the parties, the Board of Agriculture may remove a valuer who omits or refuses to act (or who is guilty of any misconduct) (sect. 5, sub-sect. 5).

And on every such removal,—or upon the death of a valuer, or in case of the valuer becoming incapable of acting, or refusing to act,—the party whose valuer he was or is, is (within a time to be fixed by the board) to appoint another valuer in his place; and if he fails to make, within the time, this substituted appointment, the board makes the substituted appointment (sect. 5, sub-sect. 6).

The Umpire, Appointment of.—The valuers (where there are two) appoint an umpire (see Official Form, No. 7); and they must do so before proceeding with the valuation; and if they fail, for fourteen days after their own appointment, to appoint an umpire, the Board of Agriculture appoints the umpire (sect. 5, sub-sect. 4) (Official Form, No. 9).

The Board of Agriculture may also, on the application of the lord or of the tenant, remove an umpire who omits or refuses to act (or who is guilty of any misconduct) (sect. 5, sub-sect. 5); and on any such removal,

or upon the death of the umpire, or in case of his becoming incapable of acting, or refusing to act, the valuers are (within a time to be fixed by the board) to appoint another umpire in his place; and if they fail to make (within the time) this substituted appointment, the board makes the substituted appointment (sect. 5, sub-sect. 6).

The Declaration of the Valuer, and of the Umpire.—

The valuer, or (where there are two valuers) each of them, is, before acting in the valuation, to make and subscribe, before a justice of the peace, the prescribed declaration, which is to the effect that he will make a faithful and true valuation; and the umpire (where there is an umpire) is, before acting, to make the like declaration; and the declaration of the valuer, or (as the case may be) of the umpire, is to be annexed to the valuation made by him; and if there are two valuers, and they agree upon and make a valuation, then the declaration of each of the two valuers is to be annexed to the valuation.

Valuer—Removal of.—The appointment of a valuer, once the appointment is made, by either lord or tenant, cannot (save with the consent of the other party) be revoked; but on the application of either of the parties, the Board of Agriculture may remove a valuer who omits or refuses to act (or who is guilty of any misconduct) (sect. 5, sub-sect. 5).

The Umpire—Removal of.—On the application of the lord or of the tenant, the Board of Agriculture may also remove an umpire who omits or refuses to

act (or who is guilty of any misconduct) (sect. 5, sub-sect. 5).

The Valuation—Reference of, to Umpire.—If the valuers, within the forty-two days after their appointment—which are allowed for their making their valuation—or within such extended time as the board may have in that behalf allowed (sect. 7, sub-sect. 8),—disagree as to the valuation, or as to any point arising therein, they may refer the whole valuation, or the point on which they disagree, to the umpire (sect. 7, sub-sect. 2); and in case they do not (within the forty-two days aforesaid, or within such extended time as aforesaid) either make their valuation or refer the valuation to the umpire, the Board of Agriculture will thereupon (in effect) refer the valuation to the umpire, by directing him to act as valuer (sect. 7, sub-sect. 4).

The Valuation—Form of.—The valuation, whether made by the valuer or valuers or by the umpire, is to be made in such form as the board directs (sect. 7, sub-sect. 6); and (among other things) it is to find the compensation at a gross sum of money (sect. 7, sub-sect. 1). And along with the form of valuation, with the declaration annexed thereto as aforesaid, there are to be delivered to the Board of Agriculture the details of the valuation (sect. 7, sub-sect. 6) (see Official Form, No. 10 (decision of valuer or valuers), and Official Form, No. 11 (decision of umpire)).

The Valuation—Remittal of.—The board, in case the valuation as delivered appears to them to be imperfect

or erroneous, will remit the valuation to the party who has delivered it (whether valuer or valuers or umpire) for re-consideration if imperfect, or for correction if erroneous (sect. 7, sub-sect. 7).

The Valuation—Proceedings in.—The valuer or valuers, and also the umpire, may (themselves, their agents, and servants) enter upon the copyhold tenement or tenements comprised in the notice to enfranchise, and make all necessary measurements, plans, and valuations (sect. 92), giving reasonable notice beforehand to the occupying tenants, and paying compensation for any injury or damage to the tenement; and no one is to obstruct or hinder him or them (sect. 93). And by summons under the seal of the board, the valuer or valuers, and also the umpire, may call for the production, at such time and place as the board appoint, of any court rolls or copies of court rolls, or any books, deeds, plans, documents, or writings, relating to any matter before them, in the possession or power of any lord or tenant or steward; and further, may summon to attend as witness any lord or tenant or other person; and may examine any witness on oath, and may administer the oath necessary for that purpose (sect. 54). Any lord, tenant, or steward, or other person so summoned and examined as a witness, will be entitled to all the privileges of a witness examined upon an ordinary trial; and the act (sect. 54, sub-sect. 3) expressly provides, that a lord or tenant shall not be bound, upon such an examination, to answer any question as to his title.

And when the identity of the copyhold tenement

cannot be ascertained to their satisfaction, the valuers are to take the quantity or acreage as being the quantity or acreage expressed in statute measure on the court rolls (sect. 52, sub-sect. 1); and when the quantity or acreage is not so stated, they are themselves to determine the quantity or acreage (sect. 52, sub-sect. 1).

And where the tenement is not defined on the court rolls by a plan, the valuers are to define the boundaries of the tenement by a plan, if either the lord or the tenant so requires (sect. 52, sub-sect. 2),—subject to this, namely, that neither party shall (without the agreement of the other) require such plan, where the boundaries of the copyholds have been (for fifty years) treated as intermixed with the boundaries of other lands, and as being incapable of being defined (sect. 52, sub-sect. 2). And every plan so made,—whether on such request of either, or with such consent of both as aforesaid,—may afterwards be approved by the board, and when so approved, is conclusive as between the parties (sect. 52, sub-sect. 4).

And whenever there is any doubt or difference of opinion between the lord on the one hand, and the tenant on the other, as to the identity of the copyhold tenement, the board will, on the application of either of them, ascertain and define the boundaries for the purposes of the enfranchisement, in such manner as the board thinks proper; and the boundaries, when so defined by the board, are, as between the parties, conclusively so defined,—for all the purposes of the enfranchisement (sect. 52, sub-sect. 4).

And where a valuation has been proceeding, whether before the valuers or before the umpire, and a new

valuer or a new umpire is, during the course thereof, appointed (under the provisions in that behalf hereinbefore mentioned), in the place of the first (or any former) valuer or umpire, the new valuer or umpire may adopt and act upon any valuation or proceeding agreed on or completed by the valuer or valuers or umpire previously acting (sect. 5, sub-sect. 6).

The valuation will, of course, extend to and comprise all the different items of compensation to the lord which are specified above^(e), under the heading "*Enfranchisement consideration, ascertainment of;*" and the valuation of all these items will be made as at the date of the notice requiring the enfranchisement (sect. 6, sub-sect. 2); and the valuation will be stated at a gross sum of money (sect. 7), and will otherwise be in the form prescribed (sect. 7, sub-sect. 6), and will have the declaration of fidelity annexed thereto; and it will be accompanied with the proper details of the valuation (sect. 7, sub-sect. 6).

And in case the valuation, as originally made and delivered, is remitted to the valuer (or, as the case may be, to the umpire) who delivered it (sect. 7, sub-sect. 7), it will be re-considered, and amended or otherwise altered and corrected by him, if and according as he thinks just.

And every valuation is conducted subject to the direction of the board.

The Valuation, when made by the Board.—By written agreement between the lord and tenant, the enfranchisement consideration may be left to be ascertained by the

Board of Agriculture (sect. 5, sub-sect. 2). Also, where the valuation proceeding before the valuer or valuers or (as the case may be) before the umpire, is not completed,—or where, being completed, it is remitted for re-consideration or correction, and the valuer or valuers or (as the case may be) the umpire to whom it is remitted does not amend it to the satisfaction of the board,—then the enfranchisement consideration will be ascertained by the Board of Agriculture itself, after due notice given to the lord and tenant (sect. 7, sub-sect. 8) (*f*).

And where the Board of Agriculture is itself ascertaining the enfranchisement consideration, they are to take such proceedings and to make such inquiries as they think necessary for the purpose; and are to take into consideration all the matters which valuers are bound to take into consideration on a valuation under the act; and are to communicate the result in writing to the lord and to the tenant, and to fix a time within which any objection to their determination may be signified to them in writing by the lord or tenant; and they are to consider every objection properly made, and, if necessary, alter their determination accordingly (sect. 7, sub-sect. 9).

Enfranchisement Consideration, when a Gross Sum and when a Rentcharge.—Where the lord is the party who is compelling the enfranchisement, then the enfranchisement consideration is to be in the form of an annual rentcharge (sect. 8, sub-sect. 1),—unless both lord and tenant agree that it shall take the form of a

(*f*) *Reg. v. Land Commissioners for England*, 23 Q. B. D. 59; and see *Reynolds v. Woodham Walter (Manor)*, L. R. 7 C. P. 639.

gross (or lump) sum ; or unless (failing such agreement) the tenant desires it to take that form, and of such his desire gives to the board written notice, within ten days after he has received from the board the draft proposed award of enfranchisement (sect. 8, sub-sect. 1).

Also, where the enfranchised tenement can, in the opinion of the board, be sufficiently identified, the enfranchisement consideration (where it amounts to more than one year's improved value of the enfranchised tenement) is to take the form of an annual rentcharge (sect. 8, sub-sect. 1),—unless both lord and tenant agree that it shall take the form of a gross (or lump) sum ; or unless (failing such agreement) the tenant desires it to take that form, and of such his desire gives to the board written notice, within ten days after he has received from the board the draft proposed award of enfranchisement (sect. 8, sub-sect. 1).

And, of course, in either of these cases, the enfranchisement consideration will (either by such agreement as aforesaid, or in consequence of such desire of the tenant as aforesaid) be a gross (or lump) sum ; as it will also be, in all cases where the enfranchisement consideration is only equal to or is less than one year's improved value of the enfranchised tenement (sect. 8, sub-sect. 2), and also in all cases where (although of an amount exceeding one year's improved value of the enfranchised tenement) the enfranchised tenement cannot, in the opinion of the board, be sufficiently identified (sect. 8, sub-sect. 2).

Enfranchisement Consideration, being a Gross Sum, Payment of.—Where the enfranchisement consideration

is a gross (or lump) sum, it is to be paid before the award of enfranchisement is made; and the receipt therefor is to be produced to the board before that award is confirmed (sect. 10, sub-sect. 4). A form of receipt for the enfranchisement consideration, when a lump sum, is given in the Appendix (Official Form, No. 13).

The Enfranchisement Rentcharge.—Where the enfranchisement consideration has taken this form, the award creates the enfranchisement rentcharge, and charges it upon the enfranchised tenement (sect. 10, sub-sect. 2); and the rentcharge so created is a rentcharge commencing as from the date of the notice requiring the enfranchisement (sect. 8, sub-sect. 1).

The Enfranchisement Award.—When the enfranchisement consideration has been ascertained, and any (if any) proper inquiries by the Board of Agriculture, touching either the enfranchisement consideration or any other matter relative to the enfranchisement, have been concluded, the board will proceed to make its award of enfranchisement, on the basis of the enfranchisement consideration so ascertained, first hearing anything either party may wish to allege (sect. 10, sub-sect. 1); and thereafter the board will, in due course, confirm the award (sect. 10, sub-sect. 1); but before confirming the award, a copy of the proposed award is to be sent to the steward and tenant respectively, unless where they have already had it before them for their perusal (sect. 10, sub-sect. 3); and the award is not to be confirmed until fourteen days thereafter. And in and by the award, it is to be shown and

expressed, whether the enfranchisement consideration is a gross (or lump) sum payable, or is a rentcharge; and, in either case, the amount thereof; and when the enfranchisement consideration is a rentcharge, the award charges the enfranchised tenement with the rentcharge; and where the enfranchisement consideration is a gross sum, that sum must be paid before the award is made, and the receipt therefor must be produced to the board before the award is confirmed (sect. 10, sub-sect. 4). The award, as confirmed, may (but need not) express that the enfranchisement thereby effected is to take effect as from a date to be therein specified (sect. 10, sub-sect. 6); and where the award specifies no such date, then the enfranchisement thereby effected takes effect as from the date itself of the confirmation (sect. 10, sub-sect. 6),—the enfranchisement rentcharge, however, commencing as we have already mentioned, as from the date of the notice to enfranchise.

Restrictive Conditions in Enfranchisement Award.—In all cases in which the copyhold tenement is subject (and by the admittance thereto is expressed to be subject) to any restrictive conditions as to the user thereof,—being conditions imposed for the benefit either of the public generally, or of the other copyholders and freeholders of the manor,—then and in all such cases, the Board of Agriculture, if satisfied that some special hardship or injustice would result from the enfranchisement being general, may, in and by the award of enfranchisement, continue and give effect to the restrictive conditions (sect. 13). Also,

when the copyholder, having had an offer from the lord to purchase his copyhold, has not accepted such offer, the Board (in lieu of suspending indefinitely, or staying altogether, the enfranchisement proceedings, as in their discretion they may do) may, in and by their award of enfranchisement, impose on the enfranchised tenement such terms and conditions as in their opinion will be sufficient to protect the lord against the prejudice which his offer of purchase was given to prevent (sect. 11, sub-sect. 3),—the prejudice referred to being the prejudice sustained by or resulting to the enjoyment of the lord's mansion house, or his park, gardens, or pleasure grounds, from the change which the enfranchisement (if completed by an award in the ordinary form) would effect in the copyhold tenement, by the removal or extinction of those incidents and conditions of the tenure which (if only they continued) would prevent this prejudice to the lord.

The Steward's Compensation.—Upon the enfranchisement of any copyhold tenement,—or of any ancient freehold tenement,—the tenant pays to the steward (sect. 9) the compensation following, that is to say: the sum of 5*s.*, when the enfranchisement consideration does not exceed 1*l.*; the sum of 10*s.*, when exceeding 1*l.* it does not exceed 5*l.*; the sum of 1*l.*, when exceeding 5*l.* it does not exceed 10*l.*; the sum of 2*l.*, when exceeding 10*l.* it does not exceed 15*l.*; the sum of 3*l.*, when exceeding 15*l.* it does not exceed 20*l.*; the sum of 4*l.*, when exceeding 20*l.* it does not exceed 25*l.*; the sum of 6*l.*, when exceeding 25*l.* it does not exceed 50*l.*; the sum of 7*l.*, when exceeding

50*l.* it does not exceed 100*l.*; and when the enfranchisement consideration exceeds 100*l.*, then the sum of 7*l.* with 10*s.* additional for every 50*l.* (or fraction of 50*l.*) beyond the first 100*l.*

And note, that the steward's compensation aforesaid is (as the act calls it) his compensation on the enfranchisement; so that it does not compensate his (the steward's) outlay for stamps, or for paper or parchment, and the like, or for any map or plan,—all which outlay is to be paid in addition to the compensation proper, and it is to be paid by the tenant; nor does the compensation given by the act exclude the steward from his proper charges for any work or labour done by him as solicitor for the tenant, *if he should have done any such work or labour*; or for any work or labour done by him as solicitor for the lord, *if he should have done any such*; nor, of course, does the compensation prescribed by the act comprise (or exclude the steward, as such, from claiming in addition thereto) the fees, the payment of which by the enfranchising tenant (unless when barred by time) is made by the act (sect. 3) a condition precedent to the tenant's exercising the right to require an enfranchisement.

The Enfranchisement—Date of taking effect.—The enfranchisement takes effect from the date of the confirmation of the award of enfranchisement, unless when the award itself (that is to say, the confirmation thereof) specifies some other date as from which the enfranchisement is to take effect (sect. 10, sub-sect. 6); in which latter case, the enfranchisement will take effect as from the date so specified. So that between

the date of giving the notice to enfranchise and the date of the confirmation of the award (when no other date is specified therein), there is an interval of time, —which interval may, of course, be either extended or abridged (and if abridged, may be even wholly extinguished) by the award, as confirmed, expressing that the enfranchisement shall take effect as from a specified date, *e.g.*, the date of the notice to enfranchise. And in respect of this interval of time (if any), the lord sustains no prejudice when the enfranchisement consideration assumes (as in general it does assume) the form of a rentcharge; for such rentcharge commences as from the date of the notice to enfranchise (sect. 8, sub-sect. 1): but when the enfranchisement consideration is a gross (or lump) sum, then inasmuch as the enfranchisement consideration (as ascertained by valuation) is the aggregate amount of the values as at the date of the notice to enfranchise of the divers incidents of tenure, &c., that are discharged by the enfranchisement (sect. 6, sub-sect. 2), the lord should have interest at the rate of 4 per cent. per annum on such enfranchisement consideration, computed from the date of the notice to enfranchise down to the date of the actual payment of the enfranchisement consideration,—a point not expressly provided for by the Copyhold Act, 1894, but which, *semble*, would follow by the common law, as a reasonable result from the provisions of the act (*g*).

Enfranchisement, Suspension of.—Where the copyhold tenement is so situate that (having regard to its

(*g*) See *Marquess of Salisbury v. L. & N. W. Rail. Co.*, (1892) 1 Ch. 75, n.

surroundings and otherwise) its prospective value (being one of the items which, by sect. 6, sub-sect. 1, are to be taken into account in the valuation whereby the enfranchisement consideration is to be ascertained) cannot, in the opinion of the Board of Agriculture, be ascertained, the Board may (in their discretion) suspend the enfranchisement proceedings (sect. 12, sub-sect. 1); also, the Board may (in their discretion) suspend those proceedings, where any special hardship or injustice would unavoidably result from the enfranchisement. Also, the Board may indefinitely suspend (and indeed stay) the enfranchisement proceedings, when the copyholder having had an offer from the lord to purchase his copyhold has not accepted such offer (sect. 11, sub-sect. 3).

Enfranchisement, Lord's Prevention of.—When the copyholder has given notice to enfranchise, it is competent to the lord to show (when he can) to the Board of Agriculture, that the proposed enfranchisement would (being completed by an award in the ordinary form) prejudicially affect the enjoyment or value of the lord's mansion house, or his park, gardens, or pleasure grounds, —such prejudice arising from the change in the copyhold tenure resulting from the enfranchisement (*scilicet*, from the removal or extinction of the incidents or conditions of the copyhold tenure resulting from the enfranchisement, and which, but for the enfranchisement, would continue, and by their continuance the prejudice would or might be prevented),—and in any such case, and upon the lord showing, to the satisfaction of the Board, such prospective prejudice, the lord is

entitled by the act (sect. 11, sub-sect. 1) to give to the copyholder a notice in writing to the effect that he is willing (and in and by the notice he offers) to purchase the copyhold; which offer the tenant is thereafter, and within twenty-eight days after receiving the notice containing it, to accept (if he intends to accept it); and his acceptance is to be by counter-notice in writing, such counter-notice being sent to the Board of Agriculture within the twenty-eight days aforesaid; and immediately thereupon the offer and the acceptance constitute a binding contract of purchase (sect. 11, sub-sect. 2); and unless the lord subsequently fails to complete his purchase, the failure being wholly the fault of the lord, the enfranchisement is effectually stopped and prevented.

Lord's Purchase of Copyhold.—When a copyholder has given notice to enfranchise, the lord may, with a view to preventing the enfranchisement, make to the copyholder, under sect. 11 of the act (in all cases in which that section is available), an offer to purchase his copyhold,—this right of purchase in the lord existing or arising upon the tenant's notice to enfranchise in any case in which the lord would (by reason of the enfranchisement, if effected by an award in the ordinary form) sustain prejudice in the enjoyment of his mansion house, or park, gardens, and pleasure grounds, and the prejudice would not arise if the copyhold tenure were to continue. And upon such offer being made (the act prescribing that it shall be made by notice in writing to the tenant), the copyholder may either accept or decline it; and if he accept it, he accepts it by counter-notice

in writing sent to the Board of Agriculture within twenty-eight days after he has received the lord's written offer. And upon such counter-notice being so sent, the offer and the acceptance constitute a binding contract (sect. 11, sub-sect. 2); and thereafter the purchase money or price is to be agreed between the lord and the tenant, or (failing their agreement) the Board will ascertain it by means of a valuation by two valuers or by a valuer (sect. 11, sub-sect. 4). And once the price is so agreed or ascertained, the Board issues, under their seal, a certificate; and in and by such certificate they define the copyhold tenement comprised in the purchase, state the purchase-money, and fix a time within which the lord is to pay it: and on the lord's payment of the purchase-money, the copyholder is to convey his tenement to the lord in and by such form of conveyance as the Board shall direct; and on the copyholder's execution of such conveyance, the tenement vests in the lord. All the expenses of and attending the purchase, and its completion, and the expenses of the valuation (if any), are paid by the lord.

Expenses of Enfranchisement Proceedings.—The party (whether lord or tenant) who requires the enfranchisement to be made, pays all the expenses thereof (sect. 34); but before the other party can recover his expenses of the enfranchisement from the party requiring the enfranchisement, and before these expenses become in fact due, they must be certified by the Board of Agriculture as properly incurred (sect. 34, sub-sect. 2). And the enfranchisement expenses extend to include, or are deemed to extend to include, all expenses which

in the opinion of the Board are incidental to the enfranchisement, whether incurred in the proof of title, in the production of documents, or in connection with witnesses, or otherwise (sect. 34, sub-sect. 4).

Expenses of Lord's Purchase.—When the lord, in order to prevent the copyholder from insisting upon an enfranchisement, has purchased the copyhold (sect. 11), then,—Firstly, if the lord duly completes his purchase, he pays all the expenses of and incident thereto, including the expenses of the valuation (if any) whereby the purchase-money has been ascertained (sect. 11, sub-sect. 8); and, Secondly, if the lord fails to complete his purchase, and the failure to complete is (in the opinion of the Board of Agriculture) due entirely to the lord's own default, he pays all the expenses thrown away, that is to say, all the expenses certified by the Board to have been incurred by the copyholder in consequence of the lord's offer, the tenant's acceptance thereof, and the lord's subsequent failure to complete (sect. 11, sub-sect. 9).

Charge in favour of the Enfranchising Lord.—When the tenant has required an enfranchisement, and the lord in order to defeat the enfranchisement has purchased up the tenement, then the lord is entitled to charge the amount of the purchase-money and also the expenses attending the purchase on the purchased tenement, and on the manor and on any land settled therewith to the same uses (sect. 36, sub-sect. 3). The charge may be of a principal sum with interest thereon at a rate not exceeding 5 per cent. per annum, or may

be by way of terminable annuity calculated on the same basis (sect. 36, sub-sect. 5).

And in the case of a compulsory enfranchisement, the lord, paying the expenses incurred by him of the enfranchisement proceedings (otherwise than out of the enfranchisement consideration, being a gross or lump sum), is entitled to charge the amount thereof, together with the costs of the charge on the manor.

Sub-sect. (2).—*Voluntary Enfranchisements.*

The Lord who may Voluntarily Enfranchise.—For the purposes of any voluntary enfranchisement under the act, the lord may be either seised of the manor for his own life only, or, *semble*, for any other life or lives, or seised in fee tail or in fee simple (sect. 94); and he need not, whatever his estate, have any power to sell the manor (sect. 94): and he need not be lawfully entitled to the manor (sect. 94): but if for the time being he fills the character of lord, that will suffice (sect. 94): or if, for the time being, he is acting as lord, that also will suffice (sect. 94). The lord may be either an individual or a body corporate (sect. 94) or collegiate (sect. 94). Ecclesiastical lords seised in right of the church or seised in any other right (sect. 94), and lords farmers holding under them (that is to say the lessees of such ecclesiastical lords), are also lords for the purpose of a voluntary enfranchisement (sect. 94).

The Tenant who may Voluntarily Enfranchise.—For the purposes of any voluntary enfranchisement under

the act, the tenant (being of course the tenant who appears by the court rolls to be the tenant) may be either a tenant in fee simple, or (where entails are permitted) a tenant in fee tail, or a tenant for his own life or for any other life, or a tenant for lives or for years, or may be two or more persons holding (*i.e.*, entitled) *successive*; or may, (in the case of lands held in undivided shares) be the owner of two-thirds in value (sect. 94),—and apparently in all these cases, the tenant must be in present possession or in actual receipt of the rents and profits, so that even a mortgagee of the copyholds in such possession or receipt,—where he is a mortgagee by surrender,—may enter into the agreement for a voluntary enfranchisement under the act (sect. 94).

The Agreement for an Enfranchisement.—The first step in a voluntary enfranchisement (and that which gives it its name) is the agreement between the lord and the tenant respectively to make and to accept an enfranchisement: and for this purpose, the lord and the tenant are by the act and subject to the act enabled to agree (sect. 14, sub-sect. 2); but the enfranchisement must as regards the lord be with the consent of the Board of Agriculture, and as regards the tenant also with the like consent (sect. 14, sub-sect. 1). And if the estate of the lord in the manor is less than the fee simple estate in possession, he is to give notice in writing of the proposed enfranchisement to the person entitled to the next estate of inheritance in remainder or reversion in the manor, unless where the tenant pays the whole of the cost of the enfranchisement; and similarly, the tenant, if his estate in the copyhold is

less than the customary fee simple estate, is to give notice in writing of the proposed enfranchisement to the person entitled to the next estate of inheritance in remainder or reversion in the copyhold, unless where the tenant pays the whole of the cost of the enfranchisement (sect. 14, sub-sect. 8),—which cost will (in the tenant's case) include, *semble*, the entire enfranchisement consideration in addition to the whole expenses of and incident to the enfranchisement. A form of notice to the remainderman or reversioner is given in the Appendix hereunder (Official Form, No. 18). And the remainderman who so receives notice of the proposed enfranchisement may signify in writing to the Board of Agriculture his assent or dissent, or his acquiescence, in respect of the enfranchisement (sect. 16, sub-sect. 2), doing so at the time when the enfranchisement deed is sent to the Board for confirmation (sect. 16, sub-sect. 2), or, *semble*, at any time prior to such date.

Enfranchisement Consideration—Ascertainment of.—

The agreement for the enfranchisement will of course fix and ascertain the enfranchisement consideration ; and for this purpose no valuation is required, although a valuation may be resorted to. And although lords and tenants may (subject to the consent of the Board of Agriculture) agree anything as the enfranchisement consideration, still they must agree what is reasonable ; and a valuation of some sort is probably the most convenient method of ascertaining what is reasonable, at least in the general case,—and whether the enfranchisement consideration is to assume the form of a money

payment, or any of the other forms in that behalf prescribed and authorized by the act.

Enfranchisement Consideration — Form of. — The enfranchisement consideration which is agreed upon by and between the lord and the tenant (and which agreement must have the sanction of the Board of Agriculture), may take any one or other of the four following forms, or may as to part thereof take one of such forms, and as to other part or parts thereof take another or others of such forms, that is to say:— either, Firstly, a gross (or lump) sum, either payable at once or at any subsequent time fixed by the agreement; or, Secondly, a rentcharge issuing out of and charged upon the enfranchised copyhold; or, Thirdly, a conveyance of other land, or of mines or minerals; or Fourthly, a conveyance of a right to waste in lands belonging to the manor (sect. 15, sub-sect. 1). But when the lord is entitled to the manor for a less estate than a fee simple estate in possession, the land which is to be given as (or as part of) the enfranchisement consideration must either be land parcel of the manor, or else (where it is not parcel of the manor) must be land which in the opinion of the Board can conveniently be held with the manor (sect. 15, sub-sect. 3). And similarly, when the enfranchisement consideration (or part thereof) is to consist of a right to mines or minerals, and the lord is entitled to the manor for a less estate than a fee simple estate in possession, the mines and minerals must either be in or under the enfranchised copyhold, or else (when they are not in or under the enfranchised copyhold) must

be mines or minerals which in the opinion of the Board can conveniently be held with the manor (sect. 15, sub-sect. 3). And subject to these requisites being complied with, the tenant is by the act (sect. 15, sub-sect. 2) enabled to convey the land or the mines and minerals to be given as the enfranchisement consideration (or as part of such consideration), although the land or the mines or minerals should be settled, that is to say, provided that they are (by the settlement) subject to the same or corresponding uses and trusts with the copyhold that is being enfranchised (sect. 15, sub-sect. 2). In other words, the act enables the tenant (although entitled for only a limited estate therein) to convey, as if he were the fee simple owner thereof, such land or such mines and minerals ; but the power so given by the act to such tenant for a limited estate is only given to him when such land or such mines and minerals are held upon the like uses and trusts as the enfranchised copyhold. And the land or mines and minerals which are to be given as the enfranchisement consideration (or as part of such consideration) must be so conveyed by the tenant, as that they shall be settled to uses or upon trusts identical with (or corresponding to) the uses or trusts to or upon which the manor is settled, where it is settled (sect. 15, sub-sect. 3), that is to say, where the lord is entitled to the manor for a less estate than a fee simple estate in possession.

The Enfranchisement Consideration, being a Gross Sum—Charge for.—When the enfranchisement consideration or any part thereof consists of principal moneys, the enfranchised tenement is by the act

(sect. 19, sub-sect. 1) charged therewith, together with interest thereon computed at the rate of 4l. per cent. per annum; and such interest is to be calculated as from the day (if any) which in and by the enfranchisement deed is fixed for the payment of the enfranchisement consideration (sect. 19, sub-sect. 1): and for the purposes of this charge, the lord is (or, at least, is deemed to be) seised of the enfranchised tenement as a mortgagee thereof in fee simple (sect. 19, sub-sect. 2), and may also distrain on the enfranchised tenement for the interest in arrear, as if it were rent in arrear (sect. 19, sub-sect. 2): and the charge is a first charge on the enfranchised tenement, taking precedence of all other mortgages or charges thereon although prior in date, save only tithe rentcharge and any (if there should be any) charge having statutory priority (sect. 19, sub-sect. 3).

The Enfranchisement Consideration, when it consists of Land, Mines, and the like.—When the enfranchisement consideration, or any part thereof, consists of land or mines or of a right to waste, the enfranchising tenant is enabled to convey to the lord the land or mines or the right to waste (sect. 18),—*scilicet*, by the appropriate deed, as if the enfranchising tenant were the fee simple owner of such land, mines, or right: and the deed is to be made to operate to the uses and upon the trusts, and subject to the powers and provisions which at the date of the enfranchisement are subsisting in respect of the manor (sect. 18).

The Enfranchisement Rentcharge.—Where the enfranchisement consideration, or any part of the

enfranchisement consideration takes (and it usually does take) the form of a rentcharge, the rentcharge is created by the enfranchising tenant,—by a deed whereby he conveys the enfranchised tenement, or any part thereof (sect. 17, sub-sect. 4), to the lord in fee simple to the use that the lord and his heirs or assigns for ever (or other the persons entitled successively to the manor under any then subsisting settlement thereof, and according to their estates and interest thereunder) shall thereout receive the rentcharge, and subject thereto to the use of the tenant in fee simple for ever (sect. 17, sub-sect. 3; sect. 27). And the rentcharge so created may be either a fixed annual sum (sect. 17, sub-sect. 1) or when it exceeds 20s. a varying annual sum,—that is to say, varying with the price of corn, and calculated upon the same averages and variable in like manner as the tithe commutation rentcharge (sect. 17, sub-sect. 1). Furthermore, but only in case the agreement for the enfranchisement shall have so provided in the first instance, the rentcharge may be subject to be afterwards increased or reduced,—such increase or reduction being either specified in the agreement, or else being subsequently ascertained by valuation in manner provided for in and by the agreement for the enfranchisement (sect. 17, sub-sect. 2). The enfranchisement rentcharge commences from the date of the confirmation of the enfranchisement deed, unless where the deed itself (that is to say, the memorandum of confirmation thereof) specifies some other date (sect. 20); in which latter case, the rentcharge will commence as from the date so specified.

Moneys payable to the Lord—Charge for.—When any principal moneys (although not being the enfranchisement consideration itself) are payable to the lord by the tenant, the enfranchised tenement is by the act (sect. 19, sub-sect. 1) charged therewith, together with interest thereon computed at the rate of 4l. per cent. per annum; and such interest is to be calculated as from the day (if any) which in and by the enfranchisement deed is fixed for the payment of the principal moneys (sect. 19, sub-sect. 1). And for the purposes of this charge, the lord is (or at least is deemed to be) seised of the enfranchised tenement as a mortgagee thereof in fee simple (sect. 19, sub-sect. 2), and may also distrain on the enfranchised tenement for the interest in arrear as if it were rent in arrear (sect. 19, sub-sect. 2). And the charge is a first charge on the enfranchised tenement, taking precedence of all other mortgages or charges thereon although prior in date, save only tithe rentcharge and any (if there should be any) charge having statutory priority (sect. 19, sub-sect. 3).

The Enfranchisement Deed.—The enfranchisement is completed by means of an enfranchisement deed, the lord conveying thereby as if he were seised of the manor in fee simple (sect. 16, sub-sect. 1); but for its due efficacy, the deed requires the consent of the Board of Agriculture (sect. 16, sub-sect. 1); and before giving its consent, in other words, before confirming the enfranchisement deed (sect. 16, sub-sect. 2), in case any remainderman entitled (under sect. 14, sub-sect. 3) to receive notice of the proposed enfranchisement shall

have signified (and he may signify) in writing to the Board when the enfranchisement deed is sent to them for confirmation (or, *semble*, at any time prior to that date) his dissent in respect of the enfranchisement, the Board institutes certain further inquiries, in order to ascertain whether the proposed enfranchisement is or is not fairly open to objection (sect. 16, sub-sect. 2) ; and even without any such signification of dissent, the Board, before confirming the enfranchisement deed, may make or give any such further inquiries or notices as they may think fit (sect. 16, sub-sect. 3).

Two forms of the enfranchisement deed are given among the official forms in the Appendix hereunder (Forms Nos. 22 and 23),—the first of them being for copyholds properly so called, and the other of them for ancient freeholds (which latter the act persistently describes as customary freeholds).

The Steward's Compensation.—The amount of the compensation to be paid to the steward, in the case of a voluntary enfranchisement, for the loss to be sustained by him from the enfranchisement (and which compensation was in all cases to be payable where the steward had a freehold, or had had a just expectation of a freehold, estate in his office) used to be ascertained by agreement ; and the amount, as so ascertained, was paid to the steward himself in all cases ; and until payment was secured to him with interest on the enfranchised tenement ; and in the case of a compulsory enfranchisement, the steward used to receive as compensation for his trouble about the enfranchisement such sum as the Copyhold Commissioners should direct,—and in

the absence of such direction, a sum amounting to one set of fees on surrender and admittance for each tenement included in the enfranchisement calculated according to the custom or usage of the manor, and ascertained by the commissioners in case of dispute; but (when more than one set of fees was so given) the commissioners might tax and moderate the amount thereof (Act 1852, s. 19). Subsequently, in all cases of enfranchisement by award (*i.e.*, in all cases of compulsory enfranchisement) after the 31st December, 1887, the steward's compensation was as provided in the schedule to the Act of 1887; and that provision of the Act of 1887 is adopted by the Act of 1894, s. 9 (as above shown). But the provision is, of course, applicable only to compulsory enfranchisements; and the act contains no provision for either ascertaining or paying (or for securing until payment) the steward's compensation, upon a voluntary enfranchisement; which must therefore, *semble*, be matter of pure agreement,—proceeding possibly, upon the analogy of what would be allowed the steward, if the enfranchisement were altogether by the common law.

The Enfranchisement—Date of Taking Effect.—The enfranchisement takes effect from the date of the confirmation of the enfranchisement deed, unless where the deed itself (that is to say, the memorandum of confirmation thereof) specifies some other date as from which the enfranchisement is to take effect (sect. 20); in which latter case, the enfranchisement will take effect as from the date so specified.

Expenses of Enfranchisement Proceedings.—These expenses are to be borne by the lord and tenant in such proportions as they may have agreed (sect. 34, sub-sect. 3),—and failing their agreement, then in such proportions as the Board of Agriculture direct (sect. 34, sub-sect. 3). And the enfranchisement expenses extend to include, or are deemed to extend to include, all expenses which, in the opinion of the board, are incidental to the enfranchisement, whether incurred in the proof of title, in the production of documents, or in connection with witnesses, or otherwise (sect. 34, sub-sect. 4).

Charge in Favour of the Enfranchising Tenant.—When, as may happen in a voluntary enfranchisement, the enfranchisement consideration consists of land, if the enfranchising tenant was the fee simple owner of the land conveyed by him, he may obtain from the Board of Agriculture a certificate specifying what sum of money is the equivalent in value of the land conveyed; and thereupon he may charge that sum on the enfranchised tenement (sect. 36, sub-sect. 2), together with the expenses of the conveyance of the land (sect. 36, sub-sect. 2), and together with, of course, the expenses of the charge itself (sect. 36, sub-sect. 4.) The charge may be of a principal sum with interest thereon at a rate not exceeding 5 per cent. per annum, or may be by way of terminable annuity calculated on the same basis (sect. 36, sub-sect. 5).

Sub-sect. (3). *Enfranchisements (Voluntary and Compulsory)—Points Common to Both.*

The Enfranchisement—Effect of.—Immediately as from the enfranchisement (whether by award or deed) taking effect, the land becomes freehold,—but held of (or as of) the enfranchising lord, who, therefore, continues entitled to the right of escheat (sect. 21, sub-sect. 1), whenever an escheat shall happen; and the land ceases to be subject to any customs of descent (whether borough-english, gavelkind, or other special custom regulative of descents); and ceases also (except as to persons married before the enfranchisement takes effect) to be subject to any customs relative to dower or freebench, or relative to the husband's tenancy by the curtesy, or relative to any other matter whatsoever (sect. 21, sub-sect. 1), not being, of course, the right of common by the act specially preserved (sect. 22); and the enfranchised land is thenceforward subject to the common law rules of descent, and (except as aforesaid) to the ordinary law of dower and of curtesy (sect. 21, sub-sect. 1),—the custom of gavelkind in the county of Kent alone being preserved (sect. 21, sub-sect. 1; sect. 95).

And the enfranchised tenement is held by the title subsisting therein before the enfranchisement thereof, that is to say, the title by which the enfranchised tenement was held at the date at which (under the enfranchisement) it first ceases to be copyhold and becomes freehold (sect. 21, sub-sect. 1); and the enfranchised tenement is in no way subject to, or affected by any thing affecting, the title to the manor

(sect. 21, sub-sect. 1); also, all (if any) mortgages to which the copyhold tenement was subject, and which continued at the date when the tenement first ceased to be copyhold and became freehold, become mortgages of the like character on the enfranchised tenement (sect. 21, sub-sect. 1), the rights and interests of the mortgagees remaining the same (sect. 21, sub-sect. 2), subject only to the enfranchisement rentcharge or other enfranchisement charge which by the act itself is given priority (sect. 21, sub-sect. 1). Consequently, if the copyhold was in settlement at the date of the enfranchisement taking effect,—under any deed or will, or otherwise,—the rights and interests of the parties under such settlement are preserved as, and become, corresponding rights and interests in the enfranchised tenement, exactly as if the enfranchised tenement had been the subject of the settlement (sect. 21, sub-sect. 2); also, where the copyhold was subject to any lease at the date of the enfranchisement taking effect, the lease is preserved as, and becomes, a lease of the enfranchised tenement, and the reversion therein takes the place of the old copyhold reversion (sect. 21, sub-sect. 3), so as to preserve all the rights and liabilities of the lessee on the one hand, and all the rights and liabilities of the reversioner on the other hand,—that is to say, all the conditions, covenants, and provisions of the lease are preserved, and are made to run with the enfranchised land and with the reversion thereon respectively,—and even rights of distress and of entry already accrued under the copyhold lease, and other rights of action already accrued under that lease, are preserved in respect of the lease of the enfranchised tenement which

is substituted therefor (sect. 21, sub-sect. 3) ; also, all (if any) rights of common to which the tenant was entitled in respect of his tenement before the enfranchisement thereof are preserved, and are annexed to the enfranchised freehold (sect. 22).

But no enfranchisement shall affect the rights which are expressly reserved by sect. 23 (sub-sect. 1) of the act, and which section corresponds with sect. 48 of the Copyhold Act, 1852,—that is to say, unless such reserved rights are expressly and specifically dealt with, either in the enfranchisement award (in the case of compulsory enfranchisements) or in the enfranchisement deed (in the case of voluntary enfranchisements) ; and these reserved rights are only to be so dealt with, when both lord and tenant expressly consent in writing thereto (sect. 23, sub-sect. 1) ; and the steward, unless specifically authorized by the lord to do so, cannot for this purpose consent on the lord's behalf (sect. 23, sub-sect. 2).

However, even where the reserved rights aforesaid are not included in the enfranchisement, the enfranchised tenement (that is to say, the owner thereof for the time being) is by the act (sect. 23, sub-sect. 1) expressly authorized, wherever and whensoever it shall be necessary to do so for the purpose of making roads or drains on the enfranchised tenement, or for the purpose of erecting buildings thereon, or of obtaining water thereon, to disturb and remove the soil of the tenement so far as is necessary or convenient for any of the purposes aforesaid.

The Rights Reserved by sect. 23, sub-sect. 1.—Formerly, that is to say, by sect. 48 of the Copyhold Act,

1852, it was provided, that an enfranchisement should not (unless with the express consent in writing of both lord and tenant) affect the reserved rights in that section specified ; and by sect. 23 (sub-sect. 1) of the Act of 1894, it is provided, that an enfranchisement shall not (unless with such express consent as aforesaid) affect the reserved rights in the section specified, and which are in fact the same rights as those reserved by sect. 48, that is to say—

- (1.) The estate or right (whether of the lord or of the tenant, or of both) in or to any mines, minerals, limestone, lime, clay, stone, gravel, pits, or quarries, whether in or under the land enfranchised or not ; or
- (2.) Any rights, howsoever arising, and whether of way or of search, or generally of working, exerciseable by either lord or tenant in respect of mines, minerals, &c. ; or
- (3.) The lord's rights in respect of fairs and markets, his rights of chase or of warren, his piscaries, or any other of his rights of hunting, shooting, fishing, fowling, or of otherwise taking game, fish, or fowl.

And when the mines and minerals so reserved, or any of them, are the property of the lord, then in addition to the mining rights aforesaid, which the lord without any express grant thereof is authorized to exercise, other or more extensive mining rights for the purpose of mining and carrying away the reserved mines under the enfranchised tenement, may, with the express consent in that behalf of the tenant, be granted or reserved to the lord, either in and by the

enfranchisement award (in the case of compulsory enfranchisement), or in and by the enfranchisement deed (in the case of voluntary enfranchisement) (sect. 24).

Enfranchisement Proceedings—Abatement of.—The enfranchisement (whether effected by award, when compulsory, or by deed, when voluntary) must be to the tenant on the court roll; and if, therefore, the enfranchising tenant dies before the enfranchisement is completed, there must be a new admittance (in respect of the copyhold), or a new enrolment (in respect of the ancient freehold),—and thereby a new tenant will be constituted; and the enfranchisement will be made to him.

But inasmuch as, in the case of a compulsory enfranchisement, the rentcharge commences as from the date of the notice given to enfranchise, the lord is (by sect. 49) to grant the necessary new admittance, or to make the necessary new enrolment, without claiming any fine, relief, or heriot in respect thereof, or of the death which has occasioned it; and where the pending enfranchisement is a voluntary one, the Board of Agriculture will in such a case provide against the lord sustaining any damage,—by, *e.g.*, fixing the date of the commencement of the rentcharge at the date of the conclusion of the enfranchisement agreement.

Enfranchisement Consideration, being a Gross Sum—Payment of.—The enfranchisement consideration, when it consists of a gross (or lump) sum of money, may in general be paid to the lord for the time being (sect. 26);

and his receipt for it will discharge the party paying it (sect. 25),—that is to say, where the lord is (or purports to be) entitled to the manor for a fee simple estate therein; and in such a case, if after such payment being so made, the title of the lord who has received the money proves to be an insufficient title, or a bad title, the true owner of the manor (or his representative) is entitled to recover the enfranchisement consideration from the lord who has so wrongfully received it, together with interest at the rate of 5 per cent. per annum, computed from the time of the receipt being proved to be wrongful, that is to say, from the time when the title of the lord who received the enfranchisement consideration is proved to be insufficient or to be bad (sect. 26, sub-sect. 3).

If, however, the enfranchisement consideration, being money, should have been paid to anyone not entitled to receive it,—that is to say, should have been paid otherwise than in pursuance of the provisions in that behalf contained in the act,—such a payment is no payment at all, not even as between the payer and the payee, and the payer may recover it back from the payee (sect. 26, sub-sect. 4): and the enfranchisement consideration not having been rightfully paid, the enfranchised tenement remains charged with it in favour of the rightful recipient (sect. 26, sub-sect. 4).

But when the enfranchising lord is not (or does not purport to be) entitled to the manor for a fee simple estate therein, but is entitled only for a limited estate, the enfranchisement consideration being a gross (or lump) sum is payable only under a direction in that behalf made by the Board of Agriculture (sect. 26,

sub-sect. 1); and the payment according to that direction will, *semble*, be a good payment, whether the direction be for payment of the money into court, or be for payment of the money to trustees appointed to receive it; and when (but only when) the sum total payable for all the enfranchisements in the manor (*semble*, by the then enfranchising tenant), does not exceed 20*l.*, the Board may direct the enfranchisement consideration to be paid to and retained by the lord for his own use, instead of directing it to be paid into court or to such trustees as aforesaid (sect. 26, sub-sect. 1). Also, when the lord (whatever may be his estate) refuses to accept the enfranchisement consideration payable to him, the enfranchising tenant is either to pay it into court or else to such trustees as aforesaid (sect. 26, sub-sect. 2). And the Board of Agriculture controls, *semble*, the subsequent application, or appropriation,—and also the investment,—of all moneys so paid into court or to such trustees as aforesaid (sect. 26, sub-sect. 5).

When the lord (whether being a corporation or an individual) is a mere trustee for some charity within the meaning of the Charitable Trusts Acts, 1853 to 1891,—then, 1stly, where such lord cannot, save under the powers in that behalf contained in the Charitable Trusts Acts, 1853 to 1891, or in the Copyhold Act, 1894, sell the manor outright, the enfranchisement consideration may (if the lord so direct) be paid to the official trustees of charitable funds in trust for the charity (sect. 76, sub-sect. 1); and any principal moneys so paid become thereafter applicable by the official trustees, under the order of the Charity Commissioners,

for the like purposes as if the money had been paid into court under the Copyhold Act, 1894 (sect. 76, sub-sect. 2); and until it is so applied, it is invested, and the income of the investments is applied, according to the provisions contained in the Charitable Trusts Acts relative to charitable funds paid to the official trustees. And, 2ndly, where such lord is able to sell the manor outright, apart from the provisions in that behalf contained in the said acts, or in the Copyhold Act, 1894, he will be able to receive and to give a valid receipt for the enfranchisement consideration.

When the lord is a corporation (and the corporation is not a mere trustee for some charity within the meaning of the Charitable Trusts Acts, 1853 and 1855),—the enfranchisement consideration may, if the lord so direct or desire, be paid to trustees for that purpose appointed by the Board of Agriculture (sect. 77).

Enfranchisement Consideration paid into Court—Application of, and investment of.—The money is applied, under the direction of the court to be obtained by the beneficiary for the time being, in one or other of the following modes of application and investment (Act 1894, sect. 33), that is to say:—

- (1.) In the redemption of the land tax on the manor or on lands held therewith;
- (2.) In the discharge of any mortgage on the manor or on lands held therewith;
- (3.) In the purchase of land (to be thereafter held with the manor);
- (4.) In the investment upon $2\frac{3}{4}$ per cent. Consols or in Government or real securities, or generally

upon any of the investments authorized for trust funds ;

- (5.) In payment to the person absolutely entitled to the manor.

Enfranchisement Consideration paid to Trustees—Application of, and investment of.—The money is applied, subject to the control of the Board of Agriculture, in the like modes of application and of investment as money paid into court is applied under the direction of the court (Act 1894, sect. 33).

Enfranchisement Consideration—Mortgage for (in lieu of payment of).—When the enfranchisement consideration is a gross (or lump) sum, the tenant, instead of paying it, may, with the consent of the lord, give a mortgage for it on the enfranchised tenement (sect. 36, sub-sect. 1) ; and so for any part of such consideration remaining unpaid (sect. 36, sub-sect. 1) ; and the expenses of the mortgage may be included in the mortgage (sect. 36, sub-sect. 4). The mortgage may be in the form either of a principal sum with interest thereon at a rate not exceeding 5 per cent. per annum, or of a terminable annuity calculated on the same basis (sect. 36, sub-sect. 5) ; this mortgage may also be given by way of certificate of charge (sect. 36, sub-sect. 6).

Charges in favour of Enfranchising Tenant.—As well in a compulsory as in a voluntary enfranchisement, where the enfranchisement consideration is a gross (or lump) sum, and the tenant pays it, he is entitled to charge it on the enfranchised tenement (sect. 36, sub-sect. 1), together with the expenses of the charge

(sect. 36, sub-sect. 4). And when he pays the expenses of the enfranchisement proceedings (*scilicet*, his expenses of those proceedings), he is entitled to charge the amount thereof on the enfranchised tenement (sect. 36, sub-sect. 1), together with the expenses of the charge (sect. 36, sub-sect. 4). The charge may be of a principal sum with interest thereon at the rate not exceeding 5 per cent. per annum, or may be a terminable annuity calculated on the same basis (sect. 36, sub-sect. 5). The charge may in either case be effected by mortgage deed or by certificate of charge under the act (sect. 36, sub-sect. 6),—the certificate of charge referred to being a certificate (in the form, or to the effect of the form, given in the first schedule to the act (sect. 41, sub-sect. 8)), and being under the seal of the Board of Agriculture and countersigned by the enfranchising tenant (sect. 41, sub-sect. 1).

The Enfranchisement Rentcharge—Days for payment of.—This rentcharge,—which, in the case of a compulsory enfranchisement, commences as from the date of the notice requiring the enfranchisement (sect. 9, sub-sect. 1), and in the case of a voluntary enfranchisement commences as from the date of the confirmation of the enfranchisement deed or (as the case may be) from the date in that behalf specified in the memorandum of confirmation (sect. 20),—is payable half-yearly (sect. 27), that is to say, on the first day of January and first day of July in every year (sect. 20); and the first payment thereof is to be made on such one of the said half-yearly days as next follows the day fixed (if any day should be fixed) for the commencement

of the rentcharge, or else (that is to say, when no such day is fixed) the date of the enfranchisement award (in the case of compulsory enfranchisements) or of the enfranchisement deed (in the case of voluntary enfranchisements); and the first payment is of a proportionate part of the rentcharge calculated for the interval between its commencement and the first half-yearly day of payment (sect. 27).

The Enfranchisement Rentcharge—Charge for and limitation of.—The rentcharge is a charge on the enfranchised tenement, being charged thereon by the enfranchisement award in the case of compulsory enfranchisements (sect. 10, sub-sect. 2), and being charged thereon by the deed creating it in the case of voluntary enfranchisements (sect. 17, sub-sect. 3); and such rentcharge is a first charge on the enfranchised tenement (sect. 27), taking precedence of all incumbrances affecting the land, although such incumbrances should be prior in date to the enfranchisement rentcharge (sect. 27), save only tithe rentcharge and any charges having statutory priority (sect. 27). And the rentcharge is (in effect) limited to the lord and his heirs to the uses, upon the trusts, and with and subject to the powers and provisions which at the date of the enfranchisement are subsisting under the settlement of the manor (if the manor is then in settlement) (sect. 27), or to the use of the lord himself in fee simple (if the manor is not then in settlement): and the rentcharge is annexed to the manor, but not so as to be inseparable therefrom, nor so as to be determined by the extinction of the manor (sect. 27).

The Rentcharge—Remedies for enforcing payment of.—For recovery of the rentcharge when in arrear, the owner thereof is entitled to all the like remedies which, by sect. 44 of the Conveyancing Act, 1881 (44 & 45 Vict. c. 41), are provided for rentcharges created after the 31st December, 1881: that is to say, the following remedies:—

- (1.) When the rentcharge is in arrear for twenty-one days,—a right of entry and distress upon the enfranchised tenement, exactly as if the rentchargee were a landlord distraining for rent in arrear:
- (2.) When the rentcharge is in arrear for forty days,—a right to enter upon and to hold the enfranchised tenement and receive the rents and profits thereof, until the then arrears (and all arrears accruing during the period of the possession and all expenses occasioned by the non-payment of the rentcharge) are satisfied:
- (3.) When the rentcharge is in arrear for forty days,—a right to demise the enfranchised tenement (whether having first entered into possession thereof or not) to a trustee for a term of years. and with or without impeachment of waste, on trust that the trustee shall by virtue of the term, and either by sale or mortgage of the enfranchised tenement, or by demise thereof, or by receipt of the rents and profits thereof or otherwise, raise and pay the arrears then due or to become due of the rentcharge and the expenses occasioned by the non-payment of the rentcharge or otherwise in relation thereto,

including the costs of the trust deed and of the execution of the trusts thereof—paying or rendering the overplus or surplus (if any) of the money raised, or of the rents and profits received, to the person who shall (subject to the term) be entitled to the enfranchised tenement.

The Enfranchisement Rentcharge—Rights of Lessee or Occupying Tenant paying.—When the enfranchised tenement is in lease, or is held under any tenancy agreement, and the lessee or occupying tenant is not by the terms of his tenancy (that is to say, as between him and his landlord) obliged to pay the enfranchisement rentcharge—if the rentchargee enforces payment from him of the rentcharge in arrear, or otherwise if the occupying tenant properly pays anything on account of such arrears, he may either recover the amount from his landlord or deduct it out of his next rent (sect. 27); and if such landlord is not himself the owner of the enfranchised tenement, but holds it upon a lease from such owner, then he may (in his turn) recover over from the owner of the enfranchised tenement, or deduct out of his next rent, the amount properly paid by his occupying tenant and allowed by him, the intermediate landlord, or which he (the intermediate landlord) may himself have paid (sect. 27); also, no lessee or sub-lessee or occupying tenant is to be liable (as between himself and his landlord), by reason of the rentcharge, to any more than he would have been liable to pay if there were no such rentcharge (sect. 29).

The Enfranchisement Rentcharge—Apportionment of.—The owner of the enfranchised tenement and the owner of the enfranchisement rentcharge issuing thereout may (by agreement *inter se*) apportion the rentcharge between or among the different parcels of the enfranchised tenement (sect. 28); but when the owner of the enfranchised tenement is a limited owner, or is otherwise not entitled for the absolute beneficial interest in that tenement, he must obtain the consent of the Board to the apportionment. Also, a person who is merely an undivided owner, cannot (without obtaining the consent of the other undivided owners) agree the apportionment,—and that is so, whether it be the enfranchised tenement or the enfranchisement rentcharge which is held in undivided ownership (sect. 28).

The Enfranchisement Rentcharge—Redemption of.—The enfranchisement rentcharge may be redeemed on any 1st day of January or 1st day of July,—the party entitled to redeem it being the person for the time being in possession of the enfranchised copyhold. And the price of redemption is twenty-five times the yearly amount of the rentcharge,—where the rentcharge is of fixed amount; and is such sum as the Board shall, on the request of the redeeming party, certify as the price of redemption,—when the rentcharge is not of fixed amount. Six months' previous notice of the intention to redeem must be given; and on the day of the expiration of such notice, the redemption money and all arrears then due of the rentcharge must be paid,—otherwise the owner of the rentcharge may proceed to

recover against the enfranchised tenement the amount of the redemption money and arrears, by the exercise of all such remedies as a mortgagee by deed is, by the Conveyancing Act, 1881, authorized to exercise for the recovery of his mortgage debt against the land charged therewith (sect. 30),—that is to say, by sale, mortgage, and otherwise ; and all the expenses of recovering the redemption money are added to the security, and are recovered as portion of the mortgage debt (sect. 30, sub-sect. 6). The Board of Agriculture will issue a certificate of redemption, when it is shown to the satisfaction of the Board that the redemption money has been paid, or even that it has been duly tendered (sect. 30, sub-sect. 5).

The Enfranchisement Rentcharge—Sale of, by Limited Owner.—The owner of the rentcharge, when he is the absolute beneficial owner thereof, may, of course, sell the rentcharge ; and when he is not the absolute beneficial owner of the rentcharge,—but is, *e.g.*, only a tenant for life thereof, he may sell it with the consent of the Board of Agriculture,—the consent of the Board being signified in writing under the seal of the Board (sect. 31) ; and in this latter case, the purchase money is, at the option of the owner of the rentcharge, either paid into court or else is paid to trustees, being trustees appointed by the Board to receive it (sect. 32, sub-sect. 2),—*scil.*, where there are no acting trustees of the settlement.

Rentcharges—Varieties of.—The various rentcharges (as distinguished from charges) which arise, or which

may be created, under the provisions of the act are as follows :—

- (1.) The enfranchisement consideration rentcharge in favour of the lord on a compulsory enfranchisement (sect. 8,—and which is created or reserved by the enfranchisement award (sect. 10, sub-sect. 2) ;
- (2.) The enfranchisement consideration rentcharge in favour of the lord on a voluntary enfranchisement (sect. 15),—and which is created by deed of grant (sect. 17, sub-sect. 3) ; and
- (3.) The terminable rentcharge which may be created, under sub-sect. 5 of sect. 35, by way of securing payment (or repayment) of the principal sums following (together with the expenses of the charge), that is to say :—

(a) The principal sum, remaining unpaid, owing to the lord on account of the enfranchisement consideration (being a gross or lump sum), and which the lord has consented to leave owing on mortgage of the enfranchised tenement,—the enfranchising tenant executing to him this charge (sect. 36, sub-sect. 1) ;

(b) The principal sum representing the aggregate of the two principal amounts following, that is to say, firstly, the principal amount paid by the enfranchising tenant for the enfranchisement consideration, and, secondly, the principal amount representing the total of all the expenses incurred by the enfranchising tenant of and incidental to the enfranchisement proceedings,—the enfranchising tenant creating this charge in favour of

himself on the enfranchised tenement (sect. 36, sub-sect. 1) ;

(c) The principal sum which (as certified by the Board) is the equivalent in value of the fee simple land conveyed (where fee simple land is conveyed) by the enfranchising tenant as the enfranchisement consideration on a voluntary enfranchisement, — the enfranchising tenant creating this charge in favour of himself on the enfranchised tenement (sect. 36, sub-sect. 2) ; and

(d) The principal sum representing the aggregate of the two principal amounts following, that is to say, firstly, the principal amount paid by the lord for the purchase of the copyhold tenement (under sect. 11) ; and, secondly, the principal amount representing the total of all the expenses incurred by the lord of and incident to such purchase,—the lord creating this charge in favour of himself on the purchased tenement, and on the manor and on any other lands held with the manor (sect. 36, sub-sect. 3).

Charges—Varieties of.—The charges (as distinguished from rentcharges) which arise, or which may be created, under the Copyhold Act, 1894, are the following:—

- (1.) The charge in favour of the lord which arises, under sect. 19 of the act, upon a voluntary enfranchisement,—this charge extending to embrace “every sum of money payable to the lord in respect of the enfranchisement,” which remains unpaid; and the charge is on the

enfranchised tenement, and carries interest at the rate of 4 per cent. per annum from the day fixed by the enfranchisement deed for the payment thereof until payment thereof.

- (2.) The charge in favour of the lord, whether on a voluntary or on a compulsory enfranchisement, which arises or is created on the enfranchised tenement for the enfranchisement consideration remaining unpaid,—or for the proportion thereof remaining unpaid,—where, being a gross sum, the lord consents (under sect. 36 of the act) to leave it (or part of it) owing on mortgage of the enfranchised tenement.
- (3.) The charge in favour of the lord, which arises or is created under sect. 38 of the act, upon a proposed compulsory enfranchisement,—where the lord prevents the enfranchisement by purchasing up the copyhold tenement,—this charge extending to such principal sum as the lord shall have paid for such purchase and for the expenses attending the purchase, and being created by the lord on the purchased tenement, and on the manor and on any lands held therewith.
- (4.) The charge in favour of the lord, which arises or is created under sect. 37 of the act,—where the lord incurs enfranchisement expenses (not being the expenses of such purchase as is lastly above mentioned), and these expenses are not of a kind to be paid by the enfranchising tenant, or, *semble*, are not in fact paid by such tenant,—this charge being on the manor and on any hereditaments held therewith.

- (5.) The charge in favour of the enfranchising tenant, which arises or is created, under sect. 36 of the act, upon a voluntary enfranchisement,—where the enfranchisement consideration consists of (or in part consists of) fee simple land of the enfranchising tenant,—this charge being created by the enfranchising tenant on the enfranchised tenement, and extending to secure such a principal sum as the Board of Agriculture shall have certified to be a fair equivalent in value for the fee simple land so conveyed.
- (6.) The charge in favour of the enfranchising tenant, which arises or is created, under sect. 36 of the act, and whether on a voluntary or on a compulsory enfranchisement,—where the enfranchising tenant (being a limited owner) pays the whole enfranchisement consideration (being a lump sum of money), or pays any part thereof, —or pays the whole enfranchisement expenses or any part of such expenses,—and the enfranchising tenant creates this charge on the enfranchised tenement.
- (7.) The charge in favour of the enfranchising tenant, which arises under sect. 38 of the act, and whether on a voluntary or compulsory enfranchisement, where the enfranchising tenant has paid (and so far as he has paid) the enfranchisement consideration (being a gross sum), and is afterwards evicted from the enfranchised tenement,—this charge subsisting in his favour against the enfranchised tenement even in the hands of the evicting owner, and carrying interest at the rate

of 4 per cent. per annum, computed from the date of the eviction.

- (8.) The charge in favour of a mortgagee of the enfranchised tenement, who (whether on a voluntary or compulsory enfranchisement) pays any part of the enfranchisement consideration (being a gross sum) or any of the enfranchisement expenses; or who pays any money for the redemption of an enfranchisement rentcharge subsisting on the mortgaged tenement, or for the expenses attending such redemption,—this charge arising under sect. 39 of the act, and being (like a future advance) added to the principal owing on his mortgage security.
- (9.) The charge in favour of a land improvement company, duly authorized to lend money on mortgage, and which advances any money to the enfranchising tenant (being a limited owner) for the purposes of the enfranchisement,—this charge arising under sect. 40 of the act, and being (in effect) the like charge which the act gives to the enfranchising tenant himself when with his own moneys he pays the enfranchisement consideration or enfranchisement expenses.
- (10.) The charge for enfranchisement (or other incidental expenses payable by one party to the other,—and the payment of which is to be directed by order of the Board of Agriculture under sect. 34 of the act),—this charge arising or being created where, owing to a dispute as to title (either the title to the manor or the title to the enfranchised tenement), the board is uncertain

upon whom to make the order to pay,—and this charge is on the manor (when the lord ought to pay), and is on the enfranchised tenement (when the tenant ought to pay).

Charges—Priority of.—A charge effected under the provisions of the act,—whether in favour of the tenant for the enfranchisement consideration paid by him, or for the expenses of the enfranchisement proceedings or otherwise (sect. 36); or in favour of the lord for the purchase-money paid by him on his purchase of the copyhold to avoid an enfranchisement (including his expenses of such purchase) (sect. 36),—is a first charge on the land or (as the case may be) on the manor that is charged therewith (sect. 36, sub-sect. 7); and has priority over all incumbrances whatsoever affecting the land or manor (save only tithe rentcharge and any charge having statutory priority); but this priority is not by the act expressly given, and (*semble*) therefore does not exist, in the case of the lord's charge for expenses incurred by him in the enfranchisement proceedings (sect. 37).

Charge—Certificate of.—Where the lord or the tenant is (under the act) entitled to a charge, and in lieu of taking (as he may do) a deed by way of mortgage, he takes a certificate of charge, the certificate is to be in the form or to the effect of the form given in the first schedule to the act (sect. 41, sub-sect. 8); and such certificate is under the seal of the Board of Agriculture (sect. 41, sub-sect. 1), and is countersigned by the party (whether lord or tenant) who takes it,

Charge—no Merger of.—The charge, which a lord takes on the manor (or on other lands settled to the same uses), or which a tenant takes on the enfranchised tenement, does not merge in the manor (or other lands aforesaid) or in the enfranchised tenement,—at least, when such charge is taken by way of certificate of charge (sect. 41, sub-sect. 6); but by express declaration of the lord or tenant entitled to the charge, it may be made to merge (sect. 41, sub-sect. 6).

Charge—Transfer of.—Where the charge in favour of a lord or tenant is taken in the form of a certificate of charge, then it is transferable by indorsement on the certificate (sect. 41, sub-sect. 5), the indorsement being in the form or to the effect of the form given in the first schedule to the act (sect. 41, sub-sect. 8); but where the charge is taken in the form of a deed by way of mortgage, it will be transferred by deed of transfer, as in the case of any ordinary mortgage.

Charges—Realization of, and Remedies incident to.—The owner of a certificate of charge (whether he be the original chargee or a transferee of the charge) has the following remedies for the realization of his charge, that is to say—

- (1.) For the recovery of the interest on his charge, or of any payment in the nature of interest, or for the recovery of any periodical payment falling due under the certificate of charge, he may exercise all or any of the remedies which, by sect. 27, sub-clause (e), are given to a rent-chargee, that is to say, the remedies appointed

by sect. 44 of the Conveyancing and Law of Property Act, 1881, for the recovery of rent-charges (sect. 41, sub-sect. 7); and

- (2.) For the recovery of the principal money owing on the charge and interest thereon, or for the recovery of any money in the nature of interest, or any periodical payment falling due under the certificate of charge, he may exercise all the like remedies which a mortgagee in fee simple of the manor or land that is subject to the charge might exercise (sect. 41, sub-sect. 7), that is to say,—He may foreclose or sell; or he may transfer; or he may appoint a receiver of the rents and profits; and generally he may exercise all the rights of an ordinary mortgagee.

Loan Companies—Charges in favour of.—A company, which is authorized to advance money to landowners to be expended by them in agricultural improvements, may lend money to pay the enfranchisement consideration, or to pay the enfranchisement expenses (either of the lord or of the tenant); and so lending is entitled to a charge therefor on the enfranchised land or (as the case may be) on the manor (sect. 40).

Mortgagee of Copyhold, Enfranchising—Charge in favour of.—If the mortgagee of the copyhold tenement enfranchises it (as he may do, if his mortgage is by surrender and he is in possession), then the enfranchisement consideration paid by him and his expenses of the enfranchisement are to be added to his security, so that the mortgaged property is not redeemable

except on payment of the moneys so added, as well as of the original mortgage debt (sect. 39). And if the enfranchisement is effected by the mortgagor, and the enfranchisement consideration takes the form of a rentcharge with priority over the mortgage debt, the mortgagee may redeem such rentcharge, and add the redemption money (including the expenses of the redemption) to his mortgage debt (sect. 39).

Receipts.—For money paid to any one in pursuance of the act (that is to say, paid to him by virtue of some provision in that behalf, whether general or specific, contained in the act), he (the party receiving) may give a valid receipt,—which receipt discharges the payer from all liability to see to the application of the money paid (sect. 25).

And by sect. 26 (sub-sect. 1), the enfranchisement consideration (being money) may, in general, be paid to the lord for the time being.

Lord's Title—Declaration as to.—As well in the case of a compulsory enfranchisement as in the case of a voluntary enfranchisement, the board may require the lord or his steward to make a statutory declaration of his title (see Official Form, No. 14, in the Appendix). The declaration is required to state who is the lord,—and the nature and extent of his estate or interest, giving the date and short particulars of the instrument under which his title arises; and it is required also to mention the name and style of the person in whose name the customary court last holden was holden, and the date of such last court; and it is required

also to specify the incumbrances (if any) which affect the manor (sect. 51, sub-sect. 1). And if such statutory declaration having been required to be made, is not made,—or if it is made but is insufficient, or does not show a satisfactory title,—or if otherwise the board thinks that the incumbrancers on the lord's title want protection, it orders the enfranchisement consideration (being a gross sum of money) to be paid into court (sect. 51, sub-sect. 2).

Lord's Title—Investigation of.—In the case of a compulsory enfranchisement, proceeding at the instance of the lord,—if the tenant requires it, the board must fully investigate the lord's title, and must satisfy themselves of that title (sect. 51, sub-sect. 3).

Lord's Title—Eviction of, after Enfranchisement.—The enfranchisement consideration (when it consists of a gross sum) may, as we have seen, be paid to the lord (sect. 26, sub-sect. 1); and the lord's receipt therefor is a sufficient discharge (sect. 25). But these provisions refer to lords who are (*i.e.*, claim to be) entitled in fee simple to the manor,—and not to any mere limited estate, *e.g.*, a life estate. And if after such payment of the enfranchisement consideration to such fee simple lord, the manor is recovered from him, by some adverse claimant, in an action of ejectment,—then such latter claimant is entitled to recover from the lord who received the enfranchisement consideration the amount received by him, with interest from the date of the recovery in ejectment (sect. 26, sub-sect. 3). But the enfranchising tenant's payment

remains good, and the receipt aforesaid which he has obtained for that payment continues to be a good discharge to him,—assuming always that the receiving lord was (under the provisions of the act) entitled to receive (and to give a receipt for) the enfranchisement consideration,—but not otherwise (sect. 26, sub-sect. 4).

Eviction of Tenant after Enfranchisement.—When a tenant has enfranchised, and has paid the enfranchisement consideration, and then afterwards is evicted,—then, inasmuch as the enfranchisement enures for the benefit of the party evicting, the enfranchised land, so far as it is already charged in favour of the enfranchising tenant with the enfranchisement consideration, remains subject to such charge; and so far as it is not already charged therewith, becomes (on the eviction) charged therewith, in favour of the enfranchising tenant, and carries interest at 4 per cent. per annum computed from the date of the eviction (sect. 38).

Discharge of Fee Farm Rents, &c.—Although the effect of the enfranchisement (as before stated) is to give the enfranchised lands the old copyhold title and not the manorial title, still any fee-farm rents, or other charges issuing out of the manor, to which the manor is subject (that is to say, which are paramount the manor), will remain charges on the land enfranchised, unless or until such fee-farm rents and charges are discharged or released, or otherwise provided for; and it has therefore been provided, that where the manor is subject to any such fee-farm rent or other such charge as aforesaid (not exceeding in general the quit

rents payable to the manor), the board may, on the application of the party liable, in any pending enfranchisement, by order under their seal, shift the burden of such fee-farm rent or other such charge off from the enfranchised land on to any freehold land of adequate value, settled to the same uses to which the manor stands limited (Act 1894, s. 56); or on to any government stocks or funds of adequate value, for this purpose transferred into the High Court, Chancery Division, by direction of the commissioners (Act 1894, s. 56), or into the names of trustees appointed by the board. And so soon as the order of the board is sealed, the manor and the land in course of enfranchisement are for ever freed and released from the fee-farm rent or other charge (sect. 56, sub-sect. 2); and the substituted security has incident to it all the like remedies, *mutatis mutandis*, that were available under the original security (sect. 56, sub-sect. 3).

Enfranchisement—in the case of Copyhold Tenants in Fee and Derivative Copyholders.—In manors in which the fines are certain and not arbitrary, and in which it is the practice to have copyholders in fee entered on the court rolls, and copyholders entitled under them by way of derivative interests also entered on the court rolls, the tenant who is to exercise the right to compel an enfranchisement, and who is to be the tenant for all other the purposes of the act, is the copyholder in fee admitted or enrolled on the court rolls, hereinafter called the tenant in fee (Act 1894, s. 79). And any enfranchisement to the tenant in fee enures for the benefit of himself and of all the derivative copyholders

under him ; and it so enures, in accordance with the respective estates and interests of the tenant in fee and of the derivative copyholders. And the enfranchisement consideration payable by the tenant in fee, and the expenses of the proceedings payable by him, and all rentcharges payable in respect of the enfranchisement, are borne by the tenant in fee and the derivative copyholders as they may, *inter se*, agree ; and, failing agreement, are borne by them in the proportions of their interests in the enfranchised lands ; and if the due apportionment is in dispute, the board may settle the dispute, and direct how the costs of the apportionment are to be borne.

And in the case of all this class of manors, the desirability of a general enfranchisement of all the lands holden of the manor may be ascertained by the board, on a local inquiry ; which local inquiry is to be directed on the request of the lord or of one-fourth in number of the copyhold tenants on the court rolls, a sufficient sum to answer the expenses of the inquiry being first provided ; and if, as the result of the local inquiry, it is found that two-thirds or more in number of the copyholders on the court rolls desire the enfranchisement, the board is to declare that all the copyholds shall be enfranchised. The enfranchisement consideration for each tenement held by a tenant in fee is thereupon to be ascertained at a gross sum, unless the lord and such tenant in fee otherwise agree ; and the enfranchisement is thereafter to be effected by the board between the lord and the tenants in fee. When such declaration as aforesaid has been made by the board, all the tenants in fee become liable to contribute to the

expenses of the local inquiry, rateably according to the amounts of the enfranchisement considerations payable for their several tenements ; and the tenant in fee of any tenement, and all the derivative copyholders of such tenement, become liable to contribute to the enfranchisement consideration and to the expenses of the proceedings (including the tenant in fee's contribution to the costs of the local inquiry), rateably according to their interests in the tenement. The apportionment of the costs of the local inquiry between the tenants in fee, and orders for the payment of such costs, may be made by the board ; and the necessary apportionments between the tenant in fee and his derivative copyholders, and orders for the payment of such apportionments, may also be made by the board ; and until such last-mentioned apportionments are made, and such last-mentioned orders for the payment of such apportionments are also made or security therefor is given, the board is not to make any award of enfranchisement in the case of any tenement held by the tenant in fee, unless such tenant in fee consents.

Disputes as to Fines, Boundaries, &c.—Where a question as to fines, boundaries, or any other question (whether in a pending suit or not) subsists between the parties or any of them, and as a preliminary to the enfranchisement it is desired to settle that question, the parties in difference may refer the question (by a written submission) to arbitration in the usual way, any person entitled only for a limited estate first obtaining the consent of the board to the reference, in which case the

board may require the remainderman or reversioner to be made a party to the reference. And when any objection is made, or question arises pending a compulsory enfranchisement, whether the question relate to any custom or the evidence thereof, or to any matter of law or fact material to the enfranchisement, the question may be referred by either party to the board ; and the board may in any such proceedings before it summon witnesses, call for documents, and examine witnesses, and may allow the expenses of witnesses, and of the production of documents, and all other expenses of the proceedings ; and the decision of the board is declared final, except that an appeal to the High Court on a matter of law is allowed, on a case to be stated by the board ; and the decision of the High Court is final, and without appeal (sect. 53). And where the identity of the lands is not ascertained to the satisfaction of the valuers, they are to take the quantities thereof as being the quantities in statute measure mentioned on the court rolls (sect. 52) ; and if these quantities in that measure are not there mentioned, then the valuers are to determine the quantities ; and where the lands are not defined by any plan on the court rolls, the valuers (if requested by either lord or tenant) are to make such a plan,—which plan, when accepted by the board, becomes conclusive ; but except where the lord and tenant both agree to it, the valuers are not to make such a plan, in cases where the boundaries have for more than fifty years been confused, and the lands treated as intermixed with other lands. Also, in any case of such difficulty of identity, where there are valuers, the board itself may, on the request

of either lord or tenant, define the boundaries,—which, when so defined, are conclusive (sect. 52, sub-sect. 4).

Scale of Compensation for Enfranchisement, and of Allowances to Valuers.—The commissioners were directed by the Act of 1887, and the Board of Agriculture is directed by the Act of 1894 (sect. 66), to prepare, print, and publish a scale of compensation for enfranchisements (as well of copyhold land as also of other customary land, and of ancient freehold land subject to heriots), on a principle fair and just, and calculated to facilitate enfranchisements; and the scale is to contain also all necessary directions for the guidance of the lord and tenant, and of the valuers. The commissioners were also to prepare, print, and publish a scale of allowances to valuers (Act 1887, s. 30); and the board is also required to prepare such a scale (sect. 66). The scales (which may be varied) are for guidance only; but although not binding in any particular case, the party compelling the enfranchisement may elect to be bound by the scale of compensation provided by the board (sect. 66, sub-sect. 4) (h).

The Lord's Escheat, &c. ; and Mines and Minerals.—Prior to the Copyhold Act, 1887, there was nothing in the Copyhold Acts which specifically reserved to the lord upon an enfranchisement (as distinguished from a commutation) his right of escheat,—and that incident (or casualty) was therefore lost on the enfranchisement,

(h) See official forms in Appendix hereunder—No. 26 (Scale of Compensation); No. 27 (Scale of Allowances to Valuers).

the enfranchised tenement coming to be held of the lord above (i), who would usually be the crown (k); consequently, the valuation for ascertaining the enfranchisement compensation payable to the lord was required to include this item of escheat. However, the Act of 1887 (s. 4) reserved that right, in the case of all enfranchisements effected under that act after the 16th September, 1887; and also expressly enacted (sect. 5), that on such enfranchisements the value of the lord's escheat should not be taken into account by the valuers; and both these provisions are re-enacted in the Act of 1894 (ss. 6, 21).

Prior to the Copyhold Act, 1852, there was nothing in the Copyhold Acts which specifically reserved to the lord upon an enfranchisement (as distinguished from a commutation) the lord's rights to mines and minerals; the Act of 1852 (s. 48) for the first time reserved such rights on an enfranchisement, unless where they were expressly included in the enfranchisement; and the provisions of sect. 48 of the Act of 1852 are now contained in sect. 23 of the Act of 1894; and in aid of the lord's rights to mines and minerals, when so reserved out of the enfranchisement, the tenant may grant him any rights of way or other mining rights (sect. 24), such rights to be reserved and granted in the enfranchisement deed (where the enfranchisement is voluntary), and in the enfranchisement award (where the enfranchisement is compulsory) (sect. 24).

Stamps.—A deed of enfranchisement is to be stamped with an *ad valorem* stamp, as in the case of a purchase

(i) Dy. 359b, pl. 1.

(k) Dy. 44a.

deed,—which it, in fact, is; and an award of enfranchisement is to bear the like stamp as an enfranchisement deed (sect. 58, sub-sect. 2). Also, every certificate of charge, and every transfer of such charge, is to be stamped with the like stamps as are chargeable respectively on a mortgage and on a mortgage transfer respectively (sect. 58, sub-sect. 3). But no agreement, valuation, schedule, or power of attorney under the Act is chargeable with any stamp duty (sect. 58, sub-sect. 1).

Disabilities of Lord or Tenant.—In any enfranchisement, the lord or tenant, being an infant, is to act by his guardian; and being a lunatic, by his committee; and being beyond the seas, by his attorney (Act 1894, s. 45); or if the lord or tenant is unascertained or unknown, or (as the case may be) has no guardian, or committee, or attorney, he is to act by a person to be in that behalf nominated (after due inquiry as to his fitness) by the board (sect. 45). If the lord or tenant is a *feme covert*, she used to act with her husband; but now she acts as a *feme sole* (sect. 46). Also, anything by the act required or authorized to be done by a lord or tenant, or by the owner of any right, may be done by him, although he may be entitled only for a limited estate or interest (sect. 43), or only as a trustee (sect. 44, sub-sect. 1); and where either the lords or the tenants are trustees, and one (or more) of them is abroad, or refuses or becomes incapable to act, the other trustee or trustees may act alone (sect. 44, sub-sect. 2).

Attorney and Power of Attorney.—Either the lord or the tenant, or any other party interested in the

enfranchisement proceedings, may act by an agent duly appointed by him in writing, or (if a corporation) by deed; and the powers of such attorney or agent shall be in all respects equal to those of the principal, until such time as his appointment is revoked by notice in writing, or (in the case of a corporation) under seal, duly communicated to the board. The power of attorney is to be in the form appointed by sect. 48 of the Act of 1894, and a duly authenticated copy of it is to be sent to the board (Act 1894, s. 48).

The lord may act as his own steward, or by any agent (other than his steward) duly appointed in writing (Act 1894, s. 47),—provided he give to the tenant and to the board notice of his intention to act by himself or (as the case may be) by such agent other than his steward; but otherwise the steward is the attorney for the lord for the purposes of all agreements, and in all matters of procedure, relating to the enfranchisement (Act 1894, s. 47), and that without any written authority appointing him attorney,—save only where a special written authority is prescribed by the act; *e.g.*, the steward must be specially authorized by the lord, if he is to act for him as regards any dealings with mines and minerals, or with any other of the lord's rights that are specially reserved in sect. 23 of the Act of 1894 (Act 1894, s. 23, sub-s. 2; and s. 47, sub-s. 2); or if he is to grant any licence under sect. 86 of the act.

Miscellaneous Provisions.—In any enfranchisement proceedings, false evidence is made perjury (sect. 54,

sub-sect. 5) ; and any wilful default to give evidence, or any tampering with the evidence, is made a misdemeanour (sect. 44, sub-sects. 4, 6). No proceedings before the board, &c., are to be quashed for want of form, or removed by certiorari (sect. 67). Any person obstructing a member or officer of the board, or any valuer or umpire, is liable (on conviction before justices) to a penalty of 5*l.* (sect. 93). Any notice under the act must be in writing (sect. 57) ; but, *semble*, it may be in writing or in print, or partly in both ; and such notice is sufficiently served if left at the usual or last-known place of abode or of business, or if sent to such place in a prepaid registered letter duly addressed to the party (sect. 57, sub-sect. 1) ; and any notice required to be given to the occupying tenant of any land is to be given by giving it to some person on the land, and (failing any such person) by fixing it on some conspicuous part of the premises (sect. 57, sub-sect. 1 (c)).

CHAPTER II. (*continued*).

ENFRANCHISEMENTS IN ORDINARY CASES.

SECT. 2. UNDER ACTS OTHER THAN THE COPYHOLD ACT, 1894.

Sub-sect. (1). *Land Tax Redemption Act, 1802, Enfranchisements under.*

THE land tax, originally granted by the Act 38 Geo. III. c. 5 (and which act was made perpetual by the act 38 Geo. III. c. 60), is a charge on lands (*a*), although in general (as between the landlord and the tenant) payable by the tenant (*b*). As a charge, it may be redeemed under the provisions of the Land Tax Redemption Acts, the principal one of which is the Act of 1802 (42 Geo. III. c. 116); and under that act, corporations and bodies politic, and companies, and trustees for charitable and other public purposes, are enabled (notwithstanding the Mortmain Acts) to contract for and to effect a redemption of the tax (sect. 9), being a charge on any manors or lands belonging to them; and individual owners generally are also enabled

(*a*) *Ward v. Const*, 10 B. & C. 635.

(*b*) *Bennett v. Womack*, 7 B. & C. 627.

to contract for and to effect a redemption of the tax (sects. 10, 11),—the usual provisions being made as to such owners when they are trustees, or are under the disabilities of infancy, lunacy, or coverture (sect. 14). And in order to pay for the redemption of the tax—where any special power in that behalf is necessary—the corporation, &c. may (among other ways and means) raise the needful moneys by an *enfranchisement* of any lands held of any manors belonging to them (sects. 60, 69)—whether such lands shall be of copyhold tenure subject to fines, &c., or shall be of any other customary tenure, or shall be of freehold tenure subject to heriots, &c. The enfranchisement is effected by deed,—which in the case of corporations subject to the Mortmain Acts must be enrolled, or else registered in the manner prescribed by the act (sect. 70). The power to enfranchise may also be exercised by lessees of the manor, although the estate or interest in reversion on such lease is in the Crown (sect. 71). The enfranchisement (excepting in the case of absolute owners) is effected with the consent of the Land Tax Commissioners (sect. 76), now the Income Tax Commissioners. In the case of ecclesiastical corporations aggregate or sole, the mines and minerals are reserved (sect. 80) (c). The enfranchisement deed is exempt from stamp duty (sect. 81). Where part only of any land is enfranchised, the ancient accustomed rent may be apportioned by the commissioners (sect. 83); and generally all questions arising on the enfranchisement may be settled and adjusted by these commissioners (sect. 84).

c) *Wilson v. Grey*, L. R. 3 Eq. 117; *Whidborne v. Ecclesiastical Commissioners*, 7 Ch. Div. 375.

And the act (with several acts amending it) contains many special provisions, which it has not been considered desirable to set forth here; but the acts may be referred to.

Sub-sect. (2). *Lands Clauses Act, 1845, Enfranchisements under.*

Where copyhold lands are taken compulsorily under the provisions of the Lands Clauses Act, 1845, and the special or other act which (in any particular case) incorporates that act, the conveyance of such lands (*scil.*, of the copyhold estate therein) (*d*) to the company is to be entered on the court rolls; and upon such entry or enrolment (and for which the fees as on a surrender are payable) (*e*), the lands vest in the company (sect. 95), but subject (until the same shall be enfranchised) to all the quit rents and other manorial incidents (including heriots, if any) to which the lands were theretofore subject (sects. 95, 96). And within three months after the conveyance is so entered or enrolled as aforesaid, or (as the case may be) within one month after the company have taken possession of the lands (*f*), the company must proceed to enfranchise the lands (sect. 96), paying such enfranchisement consideration as may be agreed between the company and the lord, or as (failing such agreement) may be ascertained by arbitration, as the compensation payable. The necessity for this immediate enfranchisement

(*d*) See Precedent No. 8 in Part III., Appendix.

(*e*) *Cooper v. Norfolk Rail. Co.*, 3 Exch. 546.

(*f*) *Salisbury (Marquess) v. L. & N. W. Rail. Co.*, (1892) 1 Ch. 75, n.; *Lowther v. Caledonian Rail. Co.*, (1892) 1 Ch. 73.

arises from this, that a corporation cannot hold lands by copy (g); and from this, that the purposes of the company require a user of the land which the restrictions of the copyhold tenure do not admit of; and it is only by an enfranchisement that the lands can be relieved of such restrictions,—for the effect of the enfranchisement, in the case of lands so taken, is the same as in the case of ordinary enfranchisements (sect. 97). Upon any such enfranchisement, if it is of a portion only of the copyhold tenement, the ancient accustomed rent may be apportioned (sect. 98). The enfranchisement is effected by deed,—usually by deed-poll of the lord (whether entitled in fee simple or for a limited estate),—a lord entitled for a limited estate being (where enabled to sell and convey the fee simple) enabled to effect an enfranchisement also (sect. 8); but the enfranchisement is to be effected by deed-poll of the company (sect. 97), where the lord of the manor fails to make a good title, or fails to execute a deed-poll of enfranchisement (h). The enfranchisement consideration is payable and applicable as in ordinary cases,—according as the lord is or becomes absolutely entitled thereto, or is entitled for a limited estate only, or is a trustee, and so forth.

Sub-sect. 3.—*Leases and Sales of Settled Estates Act, 1877, Enfranchisements under.*

In any application to the High Court, Chancery Division, for an order authorizing a sale of settled land

(g) *Att.-Gen. v. Lewin*, 8 Sim. 366.

(h) See Precedent No. 10 in Part III., Appendix.

under the provisions of the Leases and Sales of Settled Estates Act, 1877, where the land is (or as to part thereof is) of copyhold tenure, the order may direct an enfranchisement of the copyholds before the sale thereof, or before the completion of such sale. For, generally, as has been already stated, a power to sell in any lord authorizes him to make an enfranchisement, which is (in effect) a sale of his manorial rights; and conversely, as the proceeds of the sale of settled land may, under the Settled Estates Act, 1877, be invested in the purchase of lands, so part of such proceeds may, even prospectively, be applied in acquiring the lord's rights, that being (in effect) a purchase of lands; and the proceeds of the subsequent sale would not be diminished really by such an application of part thereof, seeing that the sale value of the enfranchised tenement would be increased in the exact proportion of the value of the freehold tenure (substituted by the enfranchisement) over the copyhold tenure (i).

Sub-sect. 4.—*Settled Land Act, 1882, Enfranchisements under.*

Any tenant for life (or who, under the provisions of the act (sect. 58), is to be regarded as having the powers of a tenant for life) of a settled manor or of other settled lands, of which any copyhold or other lands are holden, may sell the seignory of any freehold land held of the manor or the freehold and inheritance of

(i) *Re Adair's Settlement*, L. R. 16 Eq. 124; and see *Cookson v. Lee*, 23 L. J., Ch. 473.

any copyhold or other customary land parcel of the manor, so as in every case to effect an enfranchisement (sect. 3); and the enfranchisement may be either with or without any exception or reservation of mines and minerals, or of mining rights (sect. 3); or with or without a grant or re-grant of any rights of common (sect. 4), or of any other such rights, or of any easements (sect. 4). The lord intending to effect any such enfranchisement must apparently give the like notice to the trustees of the settlement that he would have to give in the case of any ordinary sale (sect. 45). Such tenant for life may likewise grant to the tenant of any such copyhold or customaryhold land a licence to make a lease of such land or of any part thereof (sect. 14), the lease so to be authorized being such a lease as an ordinary tenant for life may (under the act) make of ordinary freehold land; the licence is to be entered on the court rolls (sect. 14), and the steward may certify the entry; the licence may either fix the fines, fees, and other customary payments, or may fix the annual value on which such fines, &c., are for the future to be assessed (sect. 14) (*k*).

From what has been already stated in the chapter relating to voluntary enfranchisements at the common law, or apart from any of the Copyhold Acts or other enabling acts, it will be remembered, that any copyholder (although entitled for life only) may accept an enfranchisement, the enfranchisement enuring (in the case of settled estates) for the benefit of not only the tenant for life himself, but also of all others entitled in

(*k*) *Curtis v. Scates*, 14 Mee. & W. 444; and see *Cowper v. Clerk*, 3 P. Wms. 155.

remainder or otherwise under the settlement; but the difficulty in that case is, that the copyhold tenant for life must apparently (unless he proceeds under any enabling act) pay the whole enfranchisement consideration himself. However, as any such tenant for life may apply any "capital money," within the meaning of that phrase in the Settled Land Act, 1882, in or towards effecting an enfranchisement of the settled land, or of any part thereof (sect. 21, v.), and in or towards the expenses of so doing (sect. 21, x.),—and as he may also raise by mortgage of the settled land any money required for enfranchisement (sect. 18),—this difficulty is got over where the enfranchisement is effected under the S. L. Act, 1882.

An enfranchisement under the S. L. Act, 1882, is effected by deed (sect. 20).

The enfranchisement consideration must, apparently, be a gross sum in all cases, no provision being made in the S. L. Act, 1882, for the creation of any enfranchisement rentcharge; and such gross sum is to be either paid into court or to the trustees of the settlement, or to trustees to be appointed by the court as trustees of the settlement (sect. 38). The enfranchising tenant would be discharged from seeing to the application of the money, either by such payment into court as aforesaid, or on obtaining the receipt of such trustees as aforesaid (sect. 40).

The act incorporated into one body, under the style of the "Land Commissioners for England," and with a common seal, the Copyhold Commissioners, the Tithe Commissioners, and the Inclosure Commissioners (sect. 48), and vested in such new body all the powers

theretofore vested in the Copyhold Commissioners, &c.; but, as we have already stated, all these three bodies of commissioners have now been united into one body, under the name of the Board of Agriculture (l).

(l) 52 & 53 Vict. c. 30, being the statute No. 9 in the Appendix hereunder.

CHAPTER III.

ENFRANCHISEMENTS IN EXTRAORDINARY CASES.

- SECT. 1.—*Church Lands.*
SECT. 2.—*University and College Lands.*
SECT. 3.—*Crown Lands.*
SECT. 4.—*Duchy of Lancaster Lands.*
SECT. 5.—*Duchy of Cornwall Lands.*
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SECT. 1.—CHURCH LANDS, ENFRANCHISEMENT OF.

Power to Enfranchise, and Procedure generally.—A power to enfranchise church lands held by copy, or to purchase up the interests of the copyholders in such lands, is contained in the Ecclesiastical Estates Act, 1851 (being No. 4 of the statutes set forth in the Appendix hereunder), which has been amended by the Ecclesiastical Estates Act, 1851, Amendment Act, 1854 (being Statute No. 5 in that Appendix). But these acts (which are otherwise called the Episcopal and Capitular Estates Acts) did not originally extend to all church lands, but extended originally to only such lands as formed the endowments of an archbishop or bishop, or of other the dignitaries referred to in sect. 11 of the Estates Act, 1851 (which section is set forth in full in the Appendix hereunder). Latterly,

however, the Ecclesiastical Estates Acts were made to extend generally to all church lands (24 & 25 Vict. c. 105, s. 3). The power to enfranchise under these Ecclesiastical Estates Acts is to be exercised, in the case of an ecclesiastical corporation sole or aggregate, with the approval in writing of the Church Estates Commissioners (Estates Act, 1851, s. 1).

Upon the surrender of part only of the tenement comprised in any copy, the Church Estates Commissioners may apportion the rent, and may declare the part thereof that is to continue payable under the copy (Estates Act, 1851, s. 2); and such apportioned part is to be deemed the ancient accustomed or copyhold rent; and the like apportionment may also be made by the Church Estates Commissioners upon any enfranchisement (effected with their approval) of part only of the copyhold tenement (Estates Act, 1854, s. 2).

By the provisions of the earlier Copyhold Acts, any lands capable of being enfranchised under any other acts of parliament might have been enfranchised under the Copyhold Acts alone, and without reference to such other acts; and latterly, under the Copyhold Act, 1858 (sects. 2, 4, 19), an enfranchisement of church lands might be effected under the Copyhold Acts alone, whenever the tenant (although entitled for a life or lives, or for years only) had a right of renewal; or, of course, when he had the customary fee simple, or any limited estate or interest in that fee simple, all the provisions of the Copyhold Acts becoming in such cases applicable to the enfranchisement; but notice required to be given to the Ecclesiastical Commissioners of the tenant's intention to enfranchise, and

these commissioners (like remaindermen or reversioners in ordinary cases) might express their assent to or dissent from the proposed enfranchisement; and the like proceedings as in ordinary cases thereupon followed; and all these provisions are continued by the Copyhold Act, 1894 (sects. 72—75).

The enfranchisement of church lands, when it is effected under the Estates Acts, 1851, 1854, is effected by deed in the form prescribed by the Church Estates Commissioners (Estates Act, 1851, s. 5); and such deed is confirmed by these commissioners (Estates Act, 1851, s. 5); and when so confirmed, it is valid to all intents and purposes (Estates Act, 1851, s. 5) (*a*).

The enfranchisement of church lands, when it is proposed to be effected under the Copyhold Acts (without reference to the Estates Acts, 1851, 1854), is effected as follows:—

The enfranchisement may be either voluntary or compulsory:—

And firstly, when the proposed enfranchisement is voluntary,—the agreement must, of course, first be entered into: and the parties to enter into that agreement must be the proper lord and the proper tenant in that behalf. The ecclesiastical corporation, if it is

(*a*) Under the Glebe Lands Act, 1888 (51 & 52 Vict. c. 20), and the Rules of March 15, 1897, made thereunder, an enfranchisement of church lands might, *semble*, be effected, the lands comprised within that Act extending to church manors, and the sales which are thereby authorised extending, *semble*, to enfranchisements. And these enfranchisements would be carried through, subject to the control of the Board of Agriculture, and by a deed of conveyance to be executed by the rector or other incumbent, who is for this purpose authorised by the act to convey as a tenant for life under the S. L. Act, 1882.

the sole lord of the manor and entitled to possession, will be the enfranchising lord; but if the ecclesiastical corporation is not entitled in possession, the manor being in lease to some lessee or lord-farmer, then the enfranchising lord will be the lord-farmer; and he will enter into the agreement,—in which case, the consent of the ecclesiastical corporation must be annexed to the agreement (sect. 72, sub-sects. 1, 2).

Secondly, when the proposed enfranchisement is compulsory,—notice of all the proceedings in the enfranchisement must be given to the Ecclesiastical Commissioners for England (sect. 73); and these last-mentioned commissioners may (like remaindermen in the case of ordinary enfranchisements) signify their assent to or dissent from the enfranchisement proceedings,—in which case, if the Ecclesiastical Commissioners express their dissent, the Board of Agriculture will withhold its consent to the enfranchisement, until they have made such enquiries or further enquiries as the board may think fit, and until they are satisfied that the agreement is not fairly open to objection (sect. 16, sub-sect. 2).

And note, that according to the interpretation clause of the act (sect. 94), the phrase “Ecclesiastical Corporation,” as used in the act, means only such a corporation as the Episcopal and Capitular Estates Acts apply to (as above defined). But these acts having (as already mentioned above) been now extended to church lands generally, the Copyhold Act, 1894, (by sect. 74) enacts, that when the enfranchisement consideration payable is for the use of any spiritual person in respect of his benefice or cure, then it may be paid, if the enfranchising

lord so direct, to the Governors of Queen Anne's Bounty, on the receipt of their treasurer (sect. 74) ; and money so paid is held and applied by such governors as if it were moneys in their hands appropriated for the augmentation of the benefice or cure.

And the Act 1894 also provides generally (by sect. 75), that as regards all enfranchisements of church lands effected under the Act of 1894,—where it appears to the Board of Agriculture that such enfranchisements might have been effected under the Estates Acts, 1851, 1854, without recourse to the Copyhold Act, 1894, at all,—then the consideration money for the enfranchisement is to be paid and applied in like manner as if the enfranchisement had been effected under the Estates Acts, 1851, 1854 ; and the Church Estates Commissioners and the Ecclesiastical Commissioners respectively are, in that case, to have the same power over that money, and over any application or investment thereof, as they would respectively have had if the enfranchisement had been effected under the last-mentioned acts, that is to say :—

Payment and Application of Enfranchisement Consideration.—On any enfranchisement of church lands under the Ecclesiastical Estates Act, 1851, as amended by the Ecclesiastical Estates Act, 1851, Amendment Act, 1854,—and which enfranchisement, in the case of an ecclesiastical corporation aggregate, requires the approval of the Church Estates Commissioners (Estates Act, 1851, s. 1),—the enfranchisement moneys are to be paid and applied (Estates Act, 1851, s. 6) as follows :—These moneys may either

remain (with the approbation of the Church Estates Commissioners) on mortgage of the enfranchised premises, with interest at an agreed rate; or they may be paid into the Bank of England on the receipt and to the account of the Church Estates Commissioners,—in which latter case, they are to be applied, by way of permanent investment, in the purchase of the interests of other copyhold owners of church lands, or in the purchase of other lands; and in the meantime are to be applied, by way of interim investment, in the purchase of stocks in which cash under the control of the court is commonly invested (Estates Act, 1851, s. 6); and the dividends and annual income or produce is payable to the ecclesiastical corporation. But if, in consequence of the enfranchisement, and of such application of the enfranchisement moneys as aforesaid, the annual income is increased, the Church Estates Commissioners may require part of such increase to be paid over to the Ecclesiastical Commissioners as part of their common fund (Estates Act, 1851, s. 8); and if, on the other hand, there is a diminution of income, the Church Estates Commissioners are to make up the deficiency out of any moneys received by them under the act, and available for the purpose (Estates Act, 1851, s. 8),—the intention of the act being, and it is in fact expressly enacted (Estates Act, 1854, s. 6), that the old income shall in all cases be maintained.

And where the Ecclesiastical Corporation, or the Ecclesiastical Commissioners, have only a reversionary interest in the manor, the enfranchisement consideration is to be payable as follows, that is to say:—until the reversionary interest falls into possession, it is to

be paid and applied as in the case of lords entitled for a limited estate, or entitled only as trustees or under disability; and when the reversionary estate has fallen in, the moneys are to be paid over to the Church Estates Commissioners,—an order of the court being obtained for this purpose where the moneys are in court, and a direction of the Board of Agriculture being obtained where the moneys are in the hands of trustees (Copyhold Act, 1894, s. 75, proviso).

Rights of Renewal.—Where the copyholds are granted in fee simple, according to the custom, the tenant thereof, although entitled for life only, is enabled to enfranchise, and all the general provisions of the Copyhold Act, 1894, apply to him; but where the copyholds are, according to the custom of the manor, not granted in fee simple, but for life or years only, then it is important to distinguish whether the tenant has or has not a right of renewal. For by the Copyhold Act, 1858, s. 4, it was enacted, that the provisions of the act as to enfranchisements should not extend to lands held of any manors belonging to the Ecclesiastical Commissioners, or to any Ecclesiastical Corporation, where the tenant of such lands had not a right of renewal; and this provision applied as well where the title of such commissioners, or corporation, to the manor was in possession as where such title was reversionary on any lease of the manor; and by the Copyhold Act, 1894, s. 96, sub-sect. (a), it is expressly provided, that the provisions of the act as to compulsory enfranchisements shall not apply to copyholds

held for a life or lives or for years when the tenant has not a right of renewal.

Express provision for determining any dispute as to whether the copyholder for life or years (*scil.*, of church lands) has or has not a right of renewal (*b*), is contained in the Ecclesiastical Estates Act, 1851, Amendment Act, 1854: and the short effect of such provision is, that the question may be decided by action in the High Court of Justice,—an issue of law or of fact being raised in such action, and (if necessary) settled by the judge (Estates Act, 1854, s. 5); and the action being in due course brought to trial, the judgment thereon is final (Estates Act, 1854, s. 5). When the copyholder for life or lives, or years, has, or is found to have, a right of renewal, the enfranchisement consideration may (with the approval of the Church Estates Commissioners) be ascertained on the basis of the Lords' Report (1851), on the Report of 1850 of the Episcopal and Capitular Revenue Commissioners; and the expectation of life is to be calculated according to the life tables appended to the 12th Annual Report of the Registrar-General of Births, Deaths, and Marriages, or other his annual report for the time being.

Enfranchisement by the Ecclesiastical Commissioners.

—As regards the lands which became vested in the Ecclesiastical Commissioners by virtue of their

(*b*) On rights of renewal (and the certainty required therefor), see *Wharton v. King*, Anst. 659; *Walker v. Abingdon (Earl)*, 10 L. J., N. S., Ch. 259; also, Scriven on Copyholds, 7th ed., by Brown (1896), pp. 201, 202, and p. 494.

acts (c), and which have remained vested in them,—not having been re-assigned by them to the Bishops (or Archbishops), or to the Deans and Chapters, or to any canons, as parcel of the respective new endowments of these divers ecclesiastical persons,—the Ecclesiastical Commissioners grant enfranchisements by virtue merely of the powers of their acts, and quite independently of the Copyhold Act, 1894, and also quite independently of (but with some voluntary regard to) the provisions of the Ecclesiastical Estates Acts above referred to; and these commissioners have also their own form of enfranchisement deed,—to be settled and approved between them and the enfranchising tenant,—with all the proper clauses in that behalf, and some of which clauses are usually of a special character, especially as regards the mines.

(c) These Acts are : 6 & 7 Will. 4, c. 77 ; 3 & 4 Vict. c. 113 ; 5 & 6 Vict. c. 108 ; 13 & 14 Vict. c. 94 ; 14 & 15 Vict. c. 104 ; 21 & 22 Vict. c. 57 ; 23 & 24 Vict. c. 124 ; 24 & 25 Vict. c. 105 ; and 31 & 32 Vict. c. 114.

CHAPTER III. (*continued*).

ENFRANCHISEMENTS IN EXTRAORDINARY CASES.

SECT. 2.—UNIVERSITY AND COLLEGE LANDS, ENFRANCHISEMENT OF.

Power to Enfranchise, and Procedure generally.—The power to enfranchise university and college lands (belonging to the Universities of Oxford, Cambridge, and Durham, or to any of the colleges of those universities, or to Christ Church in Oxford, or to the Colleges of Eton and Winchester) held by copy, and to purchase up the interests of the copyholder in such lands, used to be contained in the Universities and College Estates Act, 1858 (being No. 6 in the Appendix of Statutes hereunder); and the power of the university or college to enfranchise was exercised with the consent of the Board of Agriculture as the successors of the copyhold commissioners (College Act, 1858, s. 1); which consent was signified by an order under the seal of the board (College Act, 1858, s. 2),—a report of the surveyor of the university or college having been first laid before them for their consideration; and if dissatisfied with that report, the board might direct an independent valuation; and the college

paid all the expenses of and incidental to the order (College Act, 1858, s. 2); and the enfranchisement was thereafter effected pursuant to the authority in that behalf contained in the order.

The College Act, 1858, was successively amended by the College Act, 1860 (23 & 24 Vict. c. 59), and by the College Act, 1880 (43 & 44 Vict. c. 46); and more recently it has been amended by the College Act, 1898 (61 & 62 Vict. c. 55). And by the College Act, 1898 (which alone of these amending acts need be considered), the power to enfranchise university or college lands held by copy must be considered to now depend solely on the College Act, 1898 (s. 1),—whereby it is enacted, that, for the purposes of enfranchisement, a university or college may exercise any of the powers conferred on a tenant for life by the Settled Lands Acts, 1882 to 1890,—the provisions contained in sects. 3, 4, 6—10, 12—14, 16, 17, 31, 34, and 55 of the Settled Land Act, 1882, and in sect. 42 of the Settled Land Act, 1884, and in sects. 2—3 of the Settled Land Act, 1889, and in sects. 5, 8, 9 of the Settled Land Act, 1890, being expressly made applicable, with the necessary verbal changes, that is to say,—The university or (as the case may be) the college is to be the tenant for life, and the university or college land is to be the settled land; and the Board of Agriculture takes the place of the trustees of the settlement, and also takes the place of the court; and it is specifically enacted (sect. 1, proviso), that the power to enfranchise shall not be exercised without the consent of the Board, and that all enfranchisement moneys (being capital moneys) shall be paid to the Board; and (by

sect. 6) further provision is made for paying to the Board and for transferring to the Board all such capital moneys,—this further provision extending also to past capital moneys. And it is also provided (Act 1898, s. 5), that on any enfranchisement from a chief rent or quit rent (but not on a general enfranchisement), the Board may, in their discretion, dispense with any report from the university or college surveyor.

Payment and Application of the Enfranchisement Consideration.—On any enfranchisement of university or college lands, the enfranchisement consideration was paid into the Bank of England, to the account of the Board of Agriculture *ex parte* the particular university or college (College Act, 1858, s. 1); and the moneys so paid into the bank were applied, generally, for the benefit of the university or college, that is to say, they were applied (by way of permanent investment) in paying any sums the university or college was liable to pay for equality of exchange, or (with the consent of the board) in the purchase of other lands in fee simple, or of long leasehold (400 years) tenure, contiguous to or convenient to be held with other lands of the university or college (College Act, 1858, s. 1); and latterly, they were applied, generally, in the repayment of any loan (*a*); and until so applied, these moneys were applied (by way of interim investment) in the purchase of any securities of the class upon which cash under the control of the court is commonly invested (College Act, 1858, s. 1),

(*a*) College Act, 1880 (43 & 44 Vict. c. 46), s. 2; *Ex parte King's College, Cambridge*, (1891) 1 Ch. 333, 677.

the dividends and income being paid to the university or college. Also, where the university or college had only a reversionary estate or interest in the manor, then, the university or college and the lessee or (lord-farmer) constituting a "joint lord," the enfranchisement consideration used to be paid and applied as follows, that is to say:—Under sect. 4 of the College Act, 1860, until the reversionary interest fell into possession, it was paid and applied as in the case of lords entitled for a limited estate, or entitled only as trustees or under disability, that is to say, in the manner prescribed in such cases by the Copyhold Act, 1852, s. 39; and when the reversionary estate fell in, the moneys were then paid over to the Copyhold Commissioners to the account of the university or college, and were applied in like manner as when the university or college was entitled as sole lord in possession.

Eventually, however, under the provisions contained in the Copyhold Act, 1887, s. 46,—and now under the provisions contained in the Copyhold Act, 1894, s. 78,—by which last-mentioned act the College Act, 1860, s. 4, has been repealed,—in the case of such university or college and any other person or persons constituting such "joint lord" as aforesaid, the enfranchisement rentcharge was to be in favour of the lord-farmer; and he (being in possession) might give to the enfranchising tenant a valid receipt for such rentcharge or for the redemption money payable therefor, and also for the enfranchisement consideration being a gross sum; but the rights of the reversionary lord (*i.e.*, of the university or college to such rentcharge or redemption money

or consideration money, as between him and such lord-farmer, were not affected by these provisions or by any of them,—all which provisions are still in full force.

And now under the College Act, 1898, it is further provided (sect. 2), that all these capital (enfranchisement) moneys, when paid (sect. 1), or when transferred (sect. 6) to the Board of Agriculture, may (with the consent of the Board) be applied by the university or college by investing the same (in the name of the Board) in any of the securities which are by law authorised for the investment of trust-funds; or else be applied for any of the purposes specified in the second schedule to the act (*a*); or else be applied in the purchase of any copyhold tenement holden of the university or college; and the income arising from the investments is payable as the income was applicable of the property which the investments are to be taken to represent.

(*a*) The purposes specified in the 2nd Schedule are (in effect): The discharge of incumbrances; or of tithe-rent-charge, land tax, chief rents (including quit rents), and Crown rents; the purchase of the tenants' interests; the purchase of mines convenient to be held, &c.; and the payment of costs and expenses properly incurred.

CHAPTER III. (*continued*).

ENFRANCHISEMENTS IN EXTRAORDINARY CASES.

SECT. 3.—CROWN MANORS.

Power to Enfranchise, and Procedure generally.—In the case of lands held of a Crown manor, the power to enfranchise such lands is contained in the Crown Lands (General Management) Act, 1830 (10 Geo. IV. c. 50), and is thereby vested in the Commissioners of Woods, Forests, and Land Revenues; and these commissioners are the persons who (on behalf of His Majesty) are to negotiate the terms of the proposed enfranchisement.

Now, with reference to Crown manors, it is to be observed, that they may belong to the Crown in possession or in remainder; and, in either case, to the Crown solely or jointly (*i.e.*, in co-parcenary) with a subject; and where the Crown's title is one in remainder, it may be in remainder expectant on an estate less than an estate of inheritance, or it may be in remainder expectant on an estate of inheritance.

And Firstly, as regards Crown manors in possession (whether held solely or jointly),—The Commissioners of Woods may (on the Crown's behalf) enter into an

agreement with the tenant for the enfranchisement of his tenement ; but none of the provisions of the Copyhold Act, 1894, relative to compulsory enfranchisements, are applicable (sect. 96). On entering into such agreement, the commissioners and the tenant may, of course, agree the enfranchisement consideration payable to the Crown ; and where they do so agree, that enfranchisement consideration will be specified in the agreement. But if they fail to agree, then they must first of all agree upon the enfranchisement (*scilicet*, upon its other terms) ; and thereupon it is competent for the commissioners, on the request of the tenant, to refer it to the Board of Agriculture to appoint a surveyor to determine the amount of the enfranchisement consideration payable to the Crown (sect. 68) ; and the board makes this appointment, and the award of the surveyor so appointed is final (sect. 68, sub-sect. 2).

And Secondly, as regards Crown manors in remainder,—

(A) Where the remainder is expectant on an estate less than an estate of inheritance, the Commissioners of Woods may (on the Crown's behalf) enter into an agreement with the tenant for the enfranchisement of his tenement ; but none of the provisions of the Copyhold Act, 1894, relative to compulsory enfranchisements, are applicable (sect. 96). On entering into such agreement, the commissioners and the tenant may, of course, agree the enfranchisement consideration payable to the Crown ; and where they do so agree, that enfranchisement consideration will be specified in the agreement. But if they fail to agree, then they must first of all agree upon the enfranchisement (*scilicet*, upon its other

terms); and thereupon it is competent for the commissioners, on the request of the tenant, to refer it to the Board of Agriculture to determine the amount of the enfranchisement consideration payable to the Crown (sect. 68); and the board makes this appointment, and the award of the surveyor is final (sect. 68, sub-sect. 2); and

(B) Where the remainder is expectant on an estate of inheritance, then, upon the Commissioners of Woods giving their consent in writing, the provisions of the act relative to voluntary enfranchisements thereunder become applicable for the enfranchisement of the lands held of the manor (sect. 69), subject, nevertheless, to the following specific provisions, that is to say :—

- (1.) The enfranchisement consideration, being a gross (or lump) sum, is to be paid as follows :—

- (a) To two trustees appointed to receive it,—one of such trustees being appointed by the commissioners, and the other of them by the person entitled to the manor in possession; or else,

- (b) Into court, to the joint account of the King and of the person entitled in possession.

- (2.) And the enfranchisement consideration being (in effect) invested, the income thereof or other the annual benefit arising therefrom is to be enjoyed by the person entitled in possession (sect. 69, sub-sect. 4),—the application prescribed for the enfranchisement consideration being either an investment properly so called, or else the redemption of land tax (if any), or the purchase of other convenient land (sect. 69, sub-sect. 8),

- to be settled to the same uses as the manor (sect. 69, sub-sect. 5).
- (3.) The enfranchisement consideration, being a rent-charge, is to be so limited as to belong to the persons (including the Crown) for the time being entitled to the manor, for the estates and interests, whether in possession or in remainder, and whether solely or jointly, for which they are respectively entitled to the manor (sect. 69, sub-sect. 5).
- (4.) On payment of the enfranchisement consideration (being such gross or lump sum), or on or before the limitation of the rentcharge (when that is the agreed enfranchisement consideration), the commissioners and the person entitled in possession concur in executing the enfranchisement deed (sect. 69, sub-sect. 6); and the enfranchisement deed is required to state the manner in which the enfranchisement money (when it is a gross or lump sum) has been applied (sect. 69, sub-sect. 7); and it may contain any reservations, subject to which the enfranchisement is to take effect (sect. 69, sub-sect. 8), or it may contain no such reservations (sect. 69, sub-sect. 8).
- (5.) On the enfranchisement deed being enrolled, it operates to pass to the tenant the fee simple estate (sect. 69, sub-sect. 8), subject only to such (if any) reservations as may be contained in the deed (sect. 69, sub-sect. 8); and the enrolment is to be effected in the "Office of Land Revenue Records and Enrolments" (sect. 71); and for

that purpose, a memorial of the enfranchisement deed is to be lodged at that office for entry (sect. 71); and thereupon a certificate, to the effect that such memorial has been so lodged, is to be written on the enfranchisement deed, and is to be signed by the Keeper of Land Revenue Records and Enrolments, or by his deputy; and only on such certificate being so written on it, does the enfranchisement deed become wholly efficacious (sect. 71, sub-sect. 4).

Also, generally, where the Crown and a subject are entitled (whether in possession or in remainder) as co-tenants of the manor, the Copyhold Act, 1894 (sect. 70), provides in such case, that, as between the subject-lord on the one hand and the copyholder on the other, all the provisions of the act (as well the voluntary as the compulsory provisions) shall be applicable (sect. 70); but that, so far as regards the share and interest of the Crown, only those provisions of the act shall be applicable which are applicable to enfranchisements in the case of Crown manors vested in the Crown solely in remainder expectant on an estate of inheritance, that is to say:—The compulsory provisions of the act are not to apply; but all the provisions of the act, relative to voluntary enfranchisements thereunder, become applicable,—subject only to the specific provisions, above epitomized, which are contained in sect. 69 of the act, and to the provisions as to the enrolment contained in section 71 of the act.

All the following provisions of the earlier Copyhold Acts extended, and the like provisions of the Copyhold

Act, 1894, extend, to Crown manors, that is to say,—the provisions enabling enfranchised copyholders to grant the lord rights of way and other rights in connection with the mines and minerals reserved to the lord; the provisions enabling courts of equity to decree a partition of copyhold lands; the provisions enabling customary courts to be held for all ordinary purposes without a homage being present; the provisions enabling grants of copyholds, and admittances thereto, to be made out of the manor and out of court,—and, as regards such admittances, without any presentment thereof; and the provisions enabling entries to be made on the court rolls (without presentment) of surrenders, wills, and other facts (Act 1894, sect. 98). And, in addition thereto, the provision of the act as to the enfranchising tenant granting other and more extensive mining rights is (by the Act of 1894) made applicable to Crown manors.

CHAPTER III. (*continued*).

ENFRANCHISEMENTS IN EXTRAORDINARY CASES.

SECT. 4.—DUCHY OF LANCASTER MANORS

Power to Enfranchise, and Procedure generally.—In the case of lands held of the Duchy of Lancaster, the power to enfranchise such lands is contained in the Acts 19 Geo. III. c. 45, and 27 Geo. III. c. 34; and is thereby vested in the chancellor and council of that duchy; and they are the persons who (on behalf of His Majesty the Duke) are to negotiate the proposed enfranchisement. Now when the Duchy is entitled to the manor, whether in possession, or in remainder or reversion on an estate less than an estate of inheritance in such manor,—and there is an enfranchisement pending (the chancellor having first entered into an agreement for that purpose with the tenant),—then and in such case the chancellor may, on the tenant requesting him to do so, refer it to the Board of Agriculture to appoint a practical land surveyor, to determine and award the amount of the enfranchisement consideration at the cost of the tenant (Act 1894, s. 68).

All the following provisions of the earlier Copyhold

Acts extended, and the like provisions contained in the Copyhold Act, 1894, extend, to Duchy of Lancaster manors, that is to say,—the provisions enabling enfranchised copyholders to grant the lords rights of way and other rights in connection with the mines and minerals reserved to the lord; the provisions enabling courts of equity to decree partition of copyhold lands; the provisions enabling customary courts to be held for all ordinary purposes without a homage being present; the provisions enabling grants of copyholds, and admittances thereto, to be made out of the manor and out of court,—and as regards such admittances, without any presentment thereof; and the provisions enabling entries to be made on the court rolls (without presentment) of surrenders, wills, and other facts.

It has not been considered desirable to set forth (save as aforesaid) the special provisions, or any of the special provisions, for the enfranchisement of lands holden of Duchy of Lancaster manors; but the acts referred to may be consulted.

CHAPTER III. (*continued*).

ENFRANCHISEMENTS IN EXTRAORDINARY CASES.

SECT. 5.—DUCHY OF CORNWALL MANORS.

Power to Enfranchise, and Procedure generally.—The power to enfranchise copyhold hereditaments properly so called, parcel of the Duchy of Cornwall, is contained in the Act 7 & 8 Vict. c. 65; and the power to enfranchise the “*conventional tenements*,”—holden of the “*assessionable manors*,”—of that duchy, is contained in the Act 7 & 8 Vict. c. 105. The Copyhold Acts 1841—1887 did not, and the Copyhold Act 1894 does not, in any way affect the estate or interest of the Crown, or of the Prince of Wales, as lord of this duchy (Act 1841, s. 99; Act 1894, s. 95, sub-clause (g)).

It has not been considered desirable to set forth at all the special provisions for the enfranchisement of lands holden of this duchy or of these manors; but the acts referred to (namely, 7 & 8 Vict. cc. 65, 105) may be consulted, together with the relevant amending provisions contained in the 26 & 27 Vict. c. 49, and 56 & 57 Vict. c. 20.

CHAPTER IV.

COMMUTATIONS UNDER THE COPYHOLD ACTS, 1841—1887.

COMMUTATIONS under the Copyhold Acts might have been either *general* commutations (*i.e.*, commutations of all the copyhold tenements held of the manor) by one and the same instrument, commonly called the commissioners' apportionment schedule (Act 1841, ss. 13—51); but all such commutations were abolished as from the 2nd August, 1858 (Act 1858, s. 2). Or they might have been *private* or *particular* commutations, affecting only the tenement or tenements of one or more of the tenants holding of the manor (Act 1841, sect. 52), and not operating to affect the other copyhold tenements of the other copyhold tenants in any way; but all such private or particular commutations have also now ceased, that is to say, since the 25th August, 1894. But whether the commutation was general or was private and particular, it was effected by agreement,—that is to say, all commutations were voluntary; no commutation, properly so called, was compulsory.

And Firstly as regards—*General Commutations*.—Where there was going to be a general commutation, the meeting, to be held for the purpose of entering into the commutation agreement, was to be called on twenty-one days' notice duly given (Act 1841, s. 13); and the

meeting, in order to be an effective meeting, must have been attended by a lord or lords entitled to three-fourths in value, and by tenants entitled to three-fourths in value and being also three-fourths in number (Act 1841, s. 13). And at such meeting duly called as aforesaid on such due notice as aforesaid,—or at any adjournment of such meeting,—an agreement might have been entered into for the *general* commutation of the lord's rents, fines, and heriots, in respect of lands holden of the manor, including his rights to timber, and also including (but only if the agreement so expressed) his rights to mines and minerals (Act 1841, s. 13); and the agreement, having been so arrived at, was reduced into writing (Act 1841, s. 13), and was to be in the form, or to the effect of the form, supplied by the commissioners (Act 1841, ss. 19, 20). The agreement bore date as of the day on which the first signature was attached thereto (Act 1841, s. 19); and there was annexed thereto, as part thereof, the written consent of any (if any) ecclesiastical or other corporation or body politic of which the manor was held or which was interested therein to the extent of one-third the value thereof (Act 1841, s. 22). The agreement was submitted to the commissioners for their confirmation or approval (Act 1841, s. 23); and on due inquiry, was confirmed by them, and the date of the confirmation added (Act 1841, s. 23); and when once so made and executed as aforesaid, and so confirmed as aforesaid, the agreement became binding on all parties interested in the manor and lands (Act 1841, ss. 14, 23). But before confirming the agreement, the commissioners might have required notice

to be given to the remainderman or reversioner (Act 1841, s. 34). And one copy of the agreement as confirmed, with the schedule, &c., thereto, was delivered to the steward, and deposited by him with the court rolls; and another copy thereof was deposited with the clerk of the peace for the county (Act 1841, s. 33),—for inspection by the parties interested, and who might also have copies thereof and extracts therefrom made, paying 2s. 6d. for an inspection, and 2d. per folio for copies and extracts (Act 1841, s. 33).

The consideration for the commutation might have been,—either (1) an annual rentcharge, together with a fixed fine (not exceeding 5s.), payable on death or alienation (Act 1841, s. 14); or (2) a fine payable on death or alienation, or at any specified time or times, of an amount to be either fixed by the agreement or thereby made subject to increase or diminution; but the consideration might also have consisted of lands, or of mines and minerals, parcel of or convenient to be held with the manor (Act 1844, s. 5). And, firstly, when the consideration was such *commutation rentcharge* as aforesaid, the rentcharge might have been one entire sum; in which case it was apportioned,—the apportionment being confirmed by the commissioners; and (in the absence of special agreement to the contrary) the rentcharge commenced as from the 1st day of January next following such confirmation (Act 1841, ss. 14, 36); and was payable half-yearly on the 1st day of January and 1st day of July (Act 1841, s. 36). Secondly, when the commutation consideration was such *commutation fine* as aforesaid, it was (in all material respects) like the old copyhold fine (Act 1841, s. 36).

Every general commutation required a valuation to be made, by valuers appointed for that purpose; and the valuers in due course sent in their valuation to the commissioners (Act 1841, ss. 25, 28), and deposited with the steward a copy thereof for inspection (Act 1841, s. 29). And the commissioners thereupon, with the aid of the steward, prepared a schedule of apportionment,—stating (1) the descriptions and acreages (in statute measure) of the lands; (2) the names and descriptions of the owners and occupiers thereof; and (3) the apportioned rentcharge chargeable on the lands (where the consideration for the commutation was a rentcharge), or the amount of the fine to become payable on death or alienation, or at any specified time in respect of the lands (where the consideration for the commutation was such fine); and stating also (4) (when the commutation consideration was a rentcharge) the period at which the rentcharge was to become due and payable, and the amount of the fine (not exceeding 5*s.*) to be payable on death or alienation; and stating also (5) the persons to whom and in what right the commutation rentcharge and fine, or the commutation fine (as the case might be), was payable; and containing all other necessary orders and declarations (Act 1841, s. 31). And the commissioners, in due course, engrossed their apportionment schedule, annexing thereto any agreements, plans, &c., required for the elucidation thereof (Act 1841, s. 32); and they confirmed the apportionment schedule under their hands and seals, adding thereto the date of confirmation (Act 1841, s. 32); and one copy of the apportionment schedule as confirmed, with the schedules, &c., thereto, was

delivered to the steward, to be deposited by him with the court rolls; and another copy thereof was deposited with the clerk of the peace for the county (Act 1841, s. 33),—for inspection by the parties interested, and who might also have copies thereof and extracts therefrom made, paying 2*s.* 6*d.* for an inspection, and 2*d.* per folio for copies and extracts (Act 1841, s. 33).

Also, if twelve tenants, or all the tenants (being less than twelve), of any manor chose to agree with the lord for a commutation (Act 1841, s. 52),—or, since the 27th June, 1848, if six even of the tenants chose to make such an agreement (Act 1848, s. 11),—the commutation might, in certain cases, have been effected by an apportionment schedule prepared by the steward, and in due course confirmed by the commissioners (Act 1841, s. 52).

Secondly, as regards—*Private or Particular Commutations*.—The lord and any one or more of his tenants might have agreed, *inter se*, for a commutation, —subject always to the commissioners' approval of the agreement being obtained (Act 1841, s. 52). The consideration for any such commutation might have been either the rentcharge (with fine) or the commutation fine, as in the case of a general commutation (Act 1841, s. 52); and the commutation was completed, with the consent of the commissioners, either by such conveyance as the lord being entitled in fee simple might have executed to the tenant, or simply by the agreement being enrolled on the court rolls (Act 1841, s. 52),—a copy of the agreement being delivered to the tenant,

in like manner as a copy admittance is delivered (Act 1841, s. 52) (a).

And as regards the effect of the commutation,—whether the same was a general commutation or was a private or particular one,—the lands affected by the commutation became, as from the date of the completion thereof, discharged from all the old rents, fines, and heriots (Act 1841, s. 36); and became subject, in lieu thereof, to the small fixed fine (not exceeding 5s.) aforesaid, and the commutation rentcharge aforesaid; or (as the case might be) to the commutation fine aforesaid payable on death or alienation (Act 1841, s. 36); and they were discharged also from all rights of the lord in respect of timber (Act 1841, s. 36), and from all other manorial incidents expressly included in the commutation (Act 1841, s. 36); but they continued to be held by copy, and were conveyed by the old customary assurances (surrender and admittance, or otherwise); and they remained parcel of the manor,—discharged, nevertheless, of and from all *customary* modes of descent, and of and from all customs as to freebench and curtesy, becoming like ordinary freehold lands in these respects (Act 1841, s. 79).

The commutation did not affect the lord's right of escheat (Act 1841, s. 82); or his right to fairs, &c.; franchises, royalties, &c.; rights of chase, warren, &c.; or his right to mines, minerals, and quarries (Act 1841, s. 82); and in aid of the lord's right to mines and minerals, so reserved out of the commutation, the tenants might grant him any rights of way or other mining rights (Act 1841, s. 84), it being sufficient for

(a) *Reynolds v. Woodham Walter (Manor)*, L. R. 7 C. P. 639.

such grant that the fact thereof, and the consideration therefor, should be stated in the agreement for the commutation (Act 1841, s. 84).

The commutation rentcharge might be sold even by persons entitled for a limited estate only therein, or entitled only as trustees thereof, or as corporations without power to sell (Act 1852, s. 36),—but in all cases with the commissioners' consent to the sale. The rentcharge might also, in general, be redeemed, on six months' notice, by any one entitled to the lands subject thereto, on payment or tender of the redemption-money to be specified in a certificate of the commissioners (Act 1852, s. 37),—the person entitled to redeem being the person entitled in possession to the land subject to the rentcharge (Act 1887, s. 17); and the price of redemption was latterly twenty-five times the amount of the annual rentcharge (Act 1887, s. 17). If, on the expiration of the notice to redeem, the price of redemption (together with all arrears of the rentcharge) was not paid, the rentchargee was entitled to exercise, in respect of the lands subject to the rentcharge, for the recovery of the redemption-money and all arrears of the rentcharge, all the powers and remedies given to mortgagees by the Conveyancing Act, 1881 (Act 1887, s. 18); and the expenses of the redemption were added to the security (Act 1887, s. 20).

In general, also, any money payable as the consideration for a commutation might have been charged (with the consent of the commissioners) on the land commuted (Act 1858, s. 21); and where the commutation consideration was land, an amount equal to the value of such land might have been charged (together with the

costs of the charge) (Act 1858, s. 26) on the commuted land (Act 1858, s. 22); and such charge might have been either a permanent one or a terminable one, according as the parties agreed, and the commissioners approved (Act 1858, s. 25); and the expenses of the commutation proceedings might also, in general, have been charged on the manor or land according to the incidence of the obligation (Act 1858, s. 24),—the certificate of charge expressing (among other things), whether the charge was in respect of consideration money or in respect of the expenses of the commutation proceedings (Act 1858, s. 29); and there were incident to the certificate of charge all the remedies of a mortgagee by deed, in addition to the specific remedies by the Copyhold Acts rendered incident to rentcharges created thereunder (Act 1858, s. 35).

And where a commutation had been effected, and it did not extend to every manorial incident, a *supplemental* commutation might afterwards have been effected,—for the purpose of including such omitted manorial incident (Act 1841, s. 54),—the consideration for such supplemental commutation being either such commutation rentcharge (with fine) as aforesaid, or such commutation fine as aforesaid (Act 1841, s. 54). Also, after any commutation or supplemental commutation, the consideration might be altered from a commutation rentcharge (with fine) to a commutation fine, or, *vice versâ* (Act 1841, s. 54); and, on any subsequent sub-division of the lands, the commutation rentcharge (with fine) or commutation fine might be apportioned like the old quit-rent, by the mere entry of the apportionment on the court rolls (Act 1841, s. 55).

All these provisions of the earlier Copyhold Acts, relative to commutations, have now been repealed,—and no equivalent or other provisions have been substituted therefor,—by the Copyhold Act, 1894,—the only provisions of that act which are applicable to commutations being those contained in sect. 63,—which, however, have reference only to past commutations. It may be, however, that the word enfranchisement, as used in the act, is of a meaning extensive enough to reach to and include commuted lands,—so that these also may be enfranchised under the act. But all future commutations, properly so called, have been abolished,—save where they may be effected by the common law.

CHAPTER V.

PRACTICAL DIRECTIONS AS TO ENFRANCHISEMENTS.

IN Chapter I., on Voluntary Enfranchisements at the Common Law, divers practical directions relative thereto are given,—the subject-matter of the ascertainment of the enfranchisement consideration being there reserved to be treated at length in this chapter, along with the consideration of the same matter in its connection with enfranchisements under the act; and, accordingly, this chapter commences with :—

SECT. 1.—VOLUNTARY ENFRANCHISEMENTS UNDER THE COPYHOLD ACT, 1894.

All enfranchisements which are voluntary originate, of course, in an agreement between the lord and the enfranchising tenant; and the first matter, therefore, to prepare is the agreement for the enfranchisement,—which agreement will specify the consideration (whether money, land, rentcharge, or whatever else), and how the same is to be paid, conveyed, or secured; and the agreement will require to be sanctioned by the Board of Agriculture. And in order that the board may be in a position to sanction the enfranchisement agreement, it must be supplied with the particulars indicated upon the official form, No. 24, in the Appendix

hereunder (and which used to be called "Form No. 1"); and upon that form being forwarded to the Board of Agriculture, signed by the steward, and with the several questions fully answered, instructions will be given by the board as to the further proceedings in the voluntary enfranchisement.

SECT. 2.—COMPULSORY ENFRANCHISEMENTS UNDER THE COPYHOLD ACT, 1894.

In compulsory enfranchisements under the Copyhold Act, it is necessary, first of all, to have regard to the directions contained in the Minute of the Board of Agriculture as to the proceedings on Compulsory Enfranchisements under the Act; and it is the duty of the person requiring the enfranchisement, to see that the requisites specified in the Minute are fully observed,—trouble and expense being saved by following strictly the instructions in this Minute. The Minute itself being set forth in the Appendix hereunder (see Official Form No. 25), it is only necessary to refer thereto for the exact provisions thereof.

SECT. 3.—ENFRANCHISEMENTS UNDER THE ECCLESIASTICAL ESTATES ACTS; AND UNDER THE UNIVERSITIES AND COLLEGES ESTATES ACTS.

Firstly, as regards Church Lands. Where the manor is in lease, the assent of the ecclesiastical corporation

of which the manor is held, is to be annexed to the enfranchisement agreement that is entered into between the lord-farmer and the enfranchising copyholder ; and the Ecclesiastical Commissioners are to receive notice of the requisition to enfranchise ; and, like remaindermen or reversioners, they may express their assent to or dissent from the proposed enfranchisement. The Church Estates Commissioners approve the proposed enfranchisement, where it is proceeding under the Estates Acts ; and where the enfranchisement is proceeding under the Copyhold Act, it is carried through either by award or by deed (according as the enfranchisement is compulsory or is voluntary) ; but where it is proceeding under the Estates Acts, it is carried through by deed, and such deed must be confirmed by the Church Estates Commissioners.

Secondly, as regards University and College Lands. The enfranchisement is effected by the university or college with the assent of the Board of Agriculture. The enfranchisement is effected by deed,—the university or college conveying like a tenant for life under the S. L. Act, 1882, s. 20,—and the board need not be parties to the deed. The consent of the board to the enfranchisement is signified by an order under the seal of the board ; and such order is obtained at the expense of the university or college, and is obtained on application to the board, the application being (in the general case) accompanied with a report of the surveyor of the university or college ; but where the enfranchisement extends only to the release of a chief rent, quit rent, or the like, the Board may dispense with that report (College Act, 1898, s. 5).

Where the manor is in lease, the lord-farmer is the enfranchising lord; and the university or college is like a remainderman or reversioner, and dealt with accordingly.

SECT. 4.—ENFRANCHISEMENTS UNDER THE LANDS
CLAUSES ACT, 1845.

The copyhold lands are first conveyed by the copyholder to the railway (or other public) company, by the deed-poll, form of which is given in the Appendix hereunder (being Precedent No. 9 in that Appendix); and the deed-poll is entered on the court rolls; and on such entry, it becomes effective as a copyhold conveyance (a),—the fees payable to the steward for entering it being the fees to which he would have been entitled on a surrender (b).

Then after such conveyance, and after the entry thereof on the court rolls, the company applies to the lord for an enfranchisement of the lands; and if the lord's title is accepted, he makes the deed of enfranchisement, copy whereof is given in the Appendix hereunder (being Precedent No. 10); but if the title of the lord is not accepted, then the enfranchisement is effected by deed-poll of the company, form of which is also given in the Appendix (being Precedent No. 11). The enfranchisement deed is entered on the court rolls. The steward will be entitled to receive, on entering the

(a) *Dimes v. Grand Junction Canal Co.*, 9 Q. B. 469; 3 H. L. Cas. 794.

(b) *Cooper v. Norfolk Rail. Co.*, 3 Exch. 546.

enfranchisement deed, the costs and charges properly incident thereto (*i.e.*, charges for preparing and engrossing same, and for obtaining its execution by the lord, and for stamps and parchment, and for entering the completed document on the court rolls). As to whether the steward is entitled to receive any compensation for the loss of his future fees (the future copyhold assurance of the land, whether on death or otherwise, being at an end), appears to be a doubtful question; but the better opinion appears to be, that this is a loss included in the enfranchisement consideration (*c*).

SECT. 5—ASCERTAINMENT OF THE ENFRANCHISEMENT
CONSIDERATION.

The enfranchisement consideration, whether ascertained by the valuers or otherwise, is ascertained by taking each of the lord's rights that are to be affected by the enfranchisement, and putting a value thereon separately, and then adding together the separate values. The lord's rights that are affected by the enfranchisement are (in the usual case) his fines, his heriots, and his quit or chief rents (including reliefs); and, occasionally, his rights in respect of timber. Also, but only in exceptional cases (*i.e.*, where the mines and minerals are to be included in the enfranchisement), the lord's mining rights must have

(*c*) *Ecclesiastical Commissioners v. London & S. W. Rail. Co.*, 14 C. B. 743; 23 L. J. C. P. 177; *In re Wilson*, 2 J. & H. 619; 32 L. J. Ch. 191.

a value put on them. And it is expressly provided (sect. 6), that in every valuation under the acts, the valuers shall take into account also the facilities for improvement which will result from the enfranchisement, together with all (if any) the special circumstances affecting the particular land, and also all (if any) the advantages which will result from the enfranchisement (not being matters already specifically provided for) (*d*); but the lord's right of escheat, not being affected by these enfranchisements, is not to be valued in (sects. 6, 21).

(1.) *The Lord's Fines*.—The value of these is ascertained as follows :—The fine being arbitrary, and therefore amounting to two years' improved value of the copyhold hereditament (*e*), you first ascertain the improved annual value (*f*); then, deducting the quit rent therefrom, you double the net value. Then, if the tenant stands admitted, and the fine on his admittance has been paid, you ascertain the present value of the next fine to become payable, whether on death or (as the case may be) on alienation, and of the next and next fine thereafter, until the present value becomes either *nil* or nominal; and you sum all these present values, and in that way obtain the value of the lord's

(*d*) *Lingwood v. Gyde*, L. R. 2 C. P. 72; *Arden v. Wilson*, L. R. 7 C. P. 535; also, *Brabant v. Wilson*, L. R. 1 Q. B. 44.

(*e*) *Grant v. Astle*, Dong. 722.

(*f*) This value is ascertained, in general upon the basis of the valuation of the property for the poor rate,—so that even a factitious value, if reasonably permanent, will be (or may be) taken as the improved annual value, equally as in poor rate assessments: see *Humphreys v. Blythen*, (1878), in Appendix D., and the notes to that case.

right to fines. Should the tenant not stand admitted, or the fine on his admittance has not been paid,—and it has not been barred by any statute of limitations,—you will add to the value ascertained as above the full amount of the fine that is presently payable ; and in that way you will obtain the value of the lord's right to fines in this case also.

For the purpose of ascertaining the present value of future fines, you ought (strictly speaking) to fix some *average interval*, as the interval which usually, or on an average, intervenes between two admittances ; and you then calculate the successive fines (and the present values thereof) upon the footing of such average interval being supposed to elapse before another fine accrues. At one time, fifteen years, in the case of lands, and thirteen years, in the case of houses, was regarded as a fair *average interval* for the generality of manors ; but this average interval would, in exceptional cases, have been too long an interval ; and in all such cases, the average interval the most nearly appropriate for each particular manor should be ascertained. An interval of fourteen years came latterly to be adopted as the fair average interval,—and that is the average interval upon the basis of which the table nextly referred to has been constructed,—but without any distinction according as the tenement is land or is a house.

Now, if the fine payable fourteen years hence would be, *e.g.*, 25*l.*, you have to ascertain the present value of 25*l.* due fourteen years hence, in the case of lands, say at 3 per cent., and in the case of houses, say at 4 per cent. Then you have to ascertain the present value of 25*l.* payable twenty-eight years hence, and the present

value forty-two years hence, and so on ; and you sum the values.

But in order to save such particular calculations in each case, it has become usual to ascertain the value of the lord's fines at so many years' purchase on the annual value ; and the Copyhold Commissioners prepared a table applicable to the "Enfranchisement of Ordinary Copyholds of Inheritance, subject to Arbitrary Fines," and showing the number of years' purchase on the annual value of property proposed to be enfranchised in respect of fines ; and such table has been subsequently improved from time to time by the Commissioners and by the Board of Agriculture as their successors ; and the table now in use, for this purpose, is the table annexed to the Scale of Compensation for Enfranchisement which is given in the Appendix hereunder (being Official Form No. 26).

From that table it will be observed, that the number of years' purchase varies with the age of the life on the court rolls,—the table taking account of lives from five years of age up to one hundred years of age,—lives under five years being treated as lives of five years, and lives over one hundred years being treated as lives of one hundred years. And it will also be observed from the table, that the minimum number of years' purchase is 2·29, and the maximum 5·16 ; and that between these respective limits, the number of years' purchase varies as the life on the court rolls is between five years and one hundred years of age. And, considering that this mode of ascertaining the present value in perpetuity of the lord's fines, is intended for general application to all cases of enfranchisement in

respect of fines where such fines are arbitrary, it may be accepted as a fair enough table in the general case, and one which may well be adopted, even in the cases of voluntary enfranchisements effected without reference to the Board of Agriculture.

To illustrate the application of the table : Suppose the annual value is 20*l.* ; then if the life on the court rolls (the fine for such admittance having been already paid) was, say twenty-nine years,—the value in perpetuity of the lord's fines would be 20*l.* multiplied by three, that is to say, 60*l.* ; or, if the life was ninety years, the value in perpetuity of the lord's fines would be 20*l.*, multiplied by five, that is to say, 100*l.* ; and so for any lives falling between the ages of twenty-nine and ninety years,—in due proportion according to the table.

When the fine is payable at fixed intervals, the like calculations *mutatis mutandis* would be made. So also, when the fine is certain, and not arbitrary ; but as regards copyholds of inheritance, subject to fines certain, a convenient practice has grown up of enfranchising them at one year's value.

In the case of copyholds of inheritance subject to arbitrary fines, payable on the death of the lord as well as on the death or alienation of the tenant (a species of copyhold which prevails in Cumberland and Westmoreland), the maximum number of years' purchase may be as much as eight years. And, *pari ratione*, in the case of copyholds for lives with right of renewal, the number of years' purchase will vary with the number of lives ; *e.g.*, for three lives, the maximum number of years' purchase may be as much as six years ; but in all such cases, the number varies with the ages

of the lives, and according as they are in possession or in reversion.

When the fine is a fine *certain*, its value in perpetuity may be arrived at by multiplying the amount of the fine by one-half of the number of years' purchase given in the table according to the age of the tenant; or (if the fine is payable on death only or on alienation only) by multiplying by one-half of one-half of that number of years' purchase. But there is, of course, in all these cases, the preliminary question, as to whether the fine is, in fact, a fine *certain*, as distinguished from a fine *arbitrary* but of ascertained amount (*g*).

(2.) *The Lord's Heriots*.—The value in perpetuity of these must be ascertained: and for this purpose, it is necessary to find the value of the heriot (if any) already payable at the date of the enfranchisement, and then to ascertain the fair average amount payable for the next heriot, and the next, and so on; and then, on the basis of such average amount, to ascertain the present value of such next and next heriot, and so forth; and the sum of the present values represents the value to be paid (in respect of heriots) for the enfranchisement. But in order to avoid this calculation, it was at one time the rule of the Copyhold Commissioners, to take the average of the last three heriots as a fair average value;

(*g*) See *Curtis v. Scales*, 14 Mee. & W. 444; and see generally 6 Vin. Abr. Copyhold (Y, b), "*Fines certain and uncertain*"; also, *Allen v. Abraham*, 2 Buls. 32; *Lord Gerard's case*, Godb. 265 (Case 365); *Perkins v. Titus*, 3 Mod. 132; and S. C. (*Anon.*), 1 Freem. 494; also (Cases of copyholds for lives) *Wharton v. King*, 3 Anst. 659, citing *Duke of Grafton v. Horton*, 3 Bro. P. C. 269; *Lord Abergavenny v. Thomas*, 4 R. R. 833.

and on that basis, to fix the value of the heriots in perpetuity as being two-and-a-half times that average value. The present rule of the Board of Agriculture is, to be gathered from clauses 7 and 8 of the Scale of Compensation (Official Form No. 26 in Appendix hereunder),—and from these clauses it appears, that the Board rather favours the old mode of ascertaining the value of the heriot by taking it as the average value of the last three heriots actually taken or paid; and where that mode of ascertaining it is not available, the matter is left comparatively at large, that is to say, is left to be ascertained by the nature of the heriot, and of the property subject thereto, combined with the station in life of the tenant. Then, the value of the heriot having been so ascertained as aforesaid, the compensation therefor (that is to say, the value thereof in perpetuity) is arrived at, by multiplying that value by one-half the number of years' purchase given in the table above referred to according to the age of the tenant,—or (if the heriot is payable on death only or on alienation only) by multiplying the value by one-half of one-half of that number of years' purchase.

(3.) *The Lord's Quit Rents (including Reliefs).*—The quit rents, chief rents, or other like rents, are usually of very small amount, and are (for the most part) payable annually. They used seldom to be exacted or collected,—it having been generally supposed (until recently), that no statute of limitations extinguished their continuing payability; but it having now been decided that copyhold quit rents (*h*), equally with

(*h*) *Howitt v. Earl of Harrington*, (1893) 2 Ch. 497.

freehold quit rents (i), are within the Statutes of Limitation, these rents are now collected regularly; and they are accordingly an element to be considered on an enfranchisement. The value in perpetuity of such rents is ascertained by taking the annual rent and multiplying it by a given (or agreed) number of years' purchase, say twenty-seven or twenty-eight years' purchase; or now (more commonly), twenty-five years' purchase. The relief is payable not annually, but on the death of the tenant, and recurs, therefore, like the fine, at uncertain intervals; and its value in perpetuity may be ascertained exactly like the value in perpetuity of a fine certain as above explained.

(4.) *The Lord's Timber Rights*.—Before a value can be put on these rights, you must, of course, first ascertain the value thereof as if no timber rights existed in the tenant; and in ascertaining such value, you must allow for the fact that the lord cannot, without a trespass (or else without the tenant's licence) enter upon the copyhold to cut and take the timber, at least in general. Having ascertained such value subject to that restriction on the effective exercise of the lord's rights, you have then to ascertain the value of the customary rights in timber enjoyed by the tenant, and to deduct such last mentioned value from the value firstly ascertained; and the difference will be the value of the lord's rights in timber. But in order to avoid the nice calculations involved, it has been usually considered, that (in ordinary cases) one-fourth of the gross value of the timber would be a fair value to

(i) *Owen v. De Beauvoir*, 16 Mee. & Wels. 547.

place on the lord's timber rights; and such one-fourth value has, in many instances, been taken accordingly, as the value to be paid for the enfranchisement from such rights. And under clause 12 of the Scale of Compensation published by the Board, the compensation for timber is ascertained as follows:—When, by the custom of the manor, the lord can enter upon the land and cut and carry away the timber, without the consent of the tenant, its whole value (after making a sufficient allowance for repairs) should be given to the lord; but if the lord cannot enter and cut without the consent of the tenant, one-half only of its value (after making a sufficient allowance for repairs) should be given. If, however, there be any special custom in the manor relating to timber, such custom should be regarded.

(5.) *The Lord's Mining Rights.*—These rights are usually reserved to the lord on an enfranchisement, and are not conveyed to the copyholder,—and principally for two reasons, namely—(1) that the mines and minerals under any ordinary copyhold tenement are usually of too restricted an acreage to make them of value to the copyholder, and are therefore better left to the lord, who thus acquires the whole coal (or other mineral) area under all the copyholds,—an acreage sufficiently extensive to be worked at a commercial profit; and (2) that the value of the mines and minerals to the lord under any one tenement is exceedingly difficult to ascertain. But if the mines and minerals are to be included in the enfranchisement and vested in the copyholder, their value must of course be ascertained,

however difficult it may be to do so; and, in ascertaining this value, it must be borne in mind that, in the general case, the lord cannot, without a trespass, or else without the tenant's licence, enter upon the copyhold tenement, either the surface thereof or the soil thereunder, for the purpose of winning and working the minerals (*k*); and that (according to the law as at present understood) he cannot do so, even if he has access thereto from adjoining lands of his own, through and by means of the tunnellings and tramways, and other ways in the mines under such adjoining lands (*l*). In consequence of this vexatious restriction on the exercise of the lord's mining rights, it has been not unusual, where no question of enfranchisement has entered into the case, but the mines are being demised with all the working powers usual in mining leases at a rent, to give the lord only one-fourth of the rent, and to give the copyholder the remaining three-fourths,—upon the maxim, apparently, that possession is nine-tenths of the law. Now, when an enfranchisement is being carried through, if the mines under the copyhold tenement are in actual work, or are portion of a coal (or other mineral) area that is in actual development, the value to the lord of the lord's mining rights under the copyhold might well be taken as being one-fourth of the rent which is (or which will in due course become) payable for the mines by a working lessee; you would then ascertain the present value of such one-fourth rent, either in perpetuity (if the mines

(*k*) *Lewis v. Branthwaite*, 2 B. & Ad. 437.

(*l*) *Bowser v. Maclean*, 3 De G. F. & J. 415; *Eardley v. Lord Granville*, 3 Ch. Div. 826.

were such as to warrant that mode of calculation) or for such a period as would suffice for the workable mineral area being exhausted ; and such present value would be the value to the lord which would be payable by the tenant as the price of the enfranchisement from the lord's mining rights. On the other hand, when an enfranchisement is proceeding, and the mines (if any) under the copyhold tenement are not in actual work, and do not form portion of an adjoining mineral area that is in actual development, it is a simple impossibility to arrive at any accurately ascertained (or even approximately ascertained) value to the lord of the mines and minerals (if any) under the tenement ; and any value put thereon as the price of the enfranchisement, therefore, can only be arrived at by agreement (where there is an agreement), or else by some more or less conjectural and arbitrary rule for each particular case,—it being not the value to the copyholder of the supposed underlying strata, but the value of such strata to the lord, that is the matter to be ascertained. And precisely because of this practical impossibility of putting any other than a more or less conjectural value on the lord's mining rights in such cases, the mines and minerals are (by sect. 23 of the Copyhold Act, 1894, continuing the like provision contained in sect. 48 of the Copyhold Act, 1852) reserved to the lord in the usual case, and (unless expressed to be) are not included in the enfranchisement ; and similarly, the lord's manorial franchises, such as fairs, markets, &c.

(6.) *Facilities for Improvement.*—The valuers are to take into account, in their valuation, the facilities for

improvement which will result from the enfranchisement of the land—*e.g.*, from the discharge of all restrictions on leasing, and generally of conditions affecting the prospective user of the enfranchised land (*m*); and the amount of the compensation to be paid, on account of the removal of such restrictions and restrictive conditions, is purely a question of fact, that is to say, it depends upon the extent to which the value of the property will, in the particular case, be increased by such removal (*n*). The prospective value of the land as building land may, *e.g.*, be properly considered (*o*); and any conditions affecting the copyholds, and which are for the benefit of the lord, will be considered, if and so far as the enfranchisement will (as it usually will) discharge all such conditions (*p*). Of course, as has been stated above, these conditions, or any of them, may in proper cases be continued or re-created on the lands enfranchised,—where the lord's enjoyment of his demesne lands would be prejudiced by the removal thereof, or where the conditions have been imposed for the benefit of the public, or of the tenants of the manor generally, and especial hardship or injustice would result from the removal thereof (*q*); but, excepting so far as such restrictive conditions are so continued or re-created as aforesaid, they are all gone by the effect of the enfranchisement (*r*).

(*m*) *Lingwood v. Gyde*, L. R. 2 C. P. 72; *Arden v. Wilson*, L. R. 7 C. P. 585.

(*n*) *Lingwood v. Gyde*, *supra*.

(*o*) *Arden v. Wilson*, *supra*.

(*p*) *Brabant v. Wilson*, L. R. 1 Q. B. 44.

(*q*) *Reynolds v. Woodham Walter (Manor)*, L. R. 7 C. P. 639.

(*r*) *Brabant v. Wilson*, *supra*; *Richards v. Harper*, L. R. 1 Exch. 199.

(7.) *Forfeitures, &c.*—The compensation for the release of the lord's (possible) rights of forfeiture,—and for or in respect of all other the incidents of tenure not otherwise specifically provided for,—are usually 20 per cent. of the annual value,—which annual value is a question of fact (and to be ascertained accordingly); but it may be as much as one-twenty-fifth of the fee simple value.

(8.) *Special Circumstances, &c.*—The value to be ascertained as the compensation payable to the lord for the enfranchisement must have regard also to (and must duly allow for) any special circumstances which may affect the lands being enfranchised, together with all the advantages which will result from the enfranchisement; and these are matters in respect of which a considerable diversity of opinion prevails; and the respective valuers of the lord and tenant experience a corresponding difficulty, each valuer being disposed (and naturally enough) to take the view which is most favourable for his own client; and all that I can say is,—that the Board will usually exercise a mediating influence as between the respective valuations under this eighth head.

PART II.
THE COPYHOLD ACT, 1894.
(57 & 58 VICT. c. 46),
With ANNOTATIONS thereon.

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57 & 58 VICT. c. 46.

An Act to consolidate the Copyhold Acts.
[25th August, 1894.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

As the title of the act denotes, the Copyhold Act, 1894, is a mere consolidation act; but the consolidation effected by the act is complete, and all future enfranchisements effected under the act depend wholly upon the act, as well for their efficacy as also for their true effect or construction. Nevertheless, as regards past enfranchisements, these operate under the prior acts (1841 to 1887), a list of which is given in the third schedule to the act,—*scilicet*, under such one or more of these prior acts as the enfranchisement was effected under; for it must be borne in mind, that no enfranchisement (being an ordinary enfranchisement) could be compelled,—in other words, there could be no compulsory enfranchisement effected,—prior to the Copyhold Act, 1852, which in this particular received a very considerable extension from the Copyhold Act, 1858. Then again, as regards the amendments made in the general law of copyholds, although these amendments might appear, on the face of the Copyhold Act, 1894, to have been effected by that act,—none of them were, in fact, effected by that act; but all of them were effected under the prior Copyhold Acts, and principally

Sect. 1. under the Act of 1841; so that, it is still necessary, for a due apprehension of the law of copyholds, to know the exact time when, and the act by which, any particular amendment in the law was effected; for otherwise it will not be possible to duly apprehend the true effect of the documents abstracted on copyhold titles, or to possess that certainty of knowledge which is indispensable in conveyancing business.

In my following annotations upon the divers sections and sub-sections of the Copyhold Act, 1894, I have kept these points in view.

PART I.—COMPULSORY ENFRANCHISEMENT.

Right to Enfranchise.

Power to
enfranchise copy-
holds.

1. Where there is an admitted tenant of copyhold land, the lord or the tenant may, subject to the provisions of this act, require and compel enfranchisement of the land.

Provided that this section shall not apply where the tenant is admitted in respect of a mortgage and the mortgagee is not in possession.

The owner of a copyhold tenement is not properly the tenant of the copyhold until he has been admitted on the court roll,—at least, as between him and the lord; and it is only the legal owner that has any right to be so admitted, and he alone may be compelled to take admittance; for, generally, the lord can regard only the legal title (*a*). It is true, that the lord may (if he so choose) admit the equitable owner; but the latter may not compel the lord to do so. And, by this section, it is only the “*admitted tenant*” who may require and compel enfranchisement.

(*a*) *Hall v. Bromley*, 35 Ch. Div. 642, per Lindley, L.J., at p. 655.

A legal title (entitling a man to be admitted, and upon the strength of which the lord may also enforce his admittance) arises or accrues under a surrender, or (by force of the New Wills Act, 1837) under a devise, or (by force of special statutes, applicable in some few cases only) under a deed—the chief instance of a deed passing an admittable estate and title being the deed appointed by sect. 20 of the Settled Land Act, 1882, as the instrument by which a tenant for life under that act may assure the copyhold tenement for the whole fee simple estate therein, or for other the whole estate that is in settlement, as effectively as if the deed in question were a surrender; and such legal title may also, of course, arise by descent.

S. 1.

The title of a mortgagee of copyholds may (equally with the title of his mortgagor) be either a legal title or an equitable title; and it is only where his title is a legal title that the mortgagee may compel admittance; but, in general, the lord may not enforce the mortgagee,—even in respect of his legal title,—to take admittance; *scilicet*, because the court roll is and continues full, by reason of the mortgagor's admittance appearing thereon, and the lord cannot (apart from some very special custom) enforce admittance, save for a vacancy on his rolls. Where the mortgagee, having the legal title, has been admitted in respect thereof, then if he is also in the possession of the copyhold tenement (but not otherwise) he may compel the lord, or the lord may compel him, to an enfranchisement; and accordingly, in sect. 94 (being the definition section) of the act, the expression "*tenant*" is made to include "a surrenderee by way of mortgage under a surrender entered on the court rolls in possession or in receipt of the rents and profits of the land"; and such *tenant*, first constituting himself an "*admitted tenant*," may compel the enfranchisement, or may (by the lord) be compelled to accept the enfranchisement.

And it may be here observed, that any mortgagee so enfranchising, or so having an enfranchisement enforced

S. 2. upon him, may (by sect. 39) add to his mortgage debt the cost of the enfranchisement (including as well the enfranchisement consideration as also all the expenses attending the enfranchisement proceedings); and he is not thereafter redeemable, save on payment of the amount of the mortgage debt as so increased, with the interest on such increased amount.

Power to
extinguish
manorial
incidents.

2. A lord or tenant of any land liable to any heriot, quitrent, free rent, or other manorial incident whatsoever, may require and compel the extinguishment of such rights or incidents affecting the land, and the release and enfranchisement of the land subject thereto, in like manner as nearly as possible as is provided by this act with respect to the right to compel the enfranchisement of copyhold land and to the proceedings thereupon, and the provisions of this act shall apply accordingly.

The owner of a freehold (*scilicet*, an ancient freehold) tenement holden of a manor is not, as a general rule, admitted thereto at all,—being in this particular very different from the owner of a copyhold tenement. At the most, so far as regards the court rolls,—he is simply entered therein as the owner (or tenant) of such and such a tenement holden of the manor,—which entry is made on his coming forward and “*acknowledging*” his free tenure; and as regards all such ancient freeholds the devolution of the title from one owner to another (upon death, alienation, and otherwise) operates and takes complete effect, independently of the lord, or (in the case of some few manors) subject, in the case of a voluntary alienation, to the lord’s first licensing the devolution.

Consequently, by this section, it is the tenant (not the admitted tenant) who, in the case of the ancient freehold

lands to which alone the section relates, may require and compel the lord to enfranchise, or else may (by the lord) be compelled to accept an enfranchisement.

S. 3.

And forasmuch as ancient freeholds are subject only to some chief rent (otherwise called a free rent or quit rent) or (occasionally) to a heriot or some other like manorial incident,—therefore, by this second section of the act, the enfranchisement consists in (and is, of necessity, limited to) the release or extinguishment of such chief rent, or of such heriot, or of such other like manorial incident,—the enfranchised tenement being (save for such rent, or heriot, or other like incident) already completely freehold. It is true, that escheat to the lord attaches to ancient freeholds equally as it attaches to copyhold tenements,—but the incident of escheat not being affected by the enfranchisement (sect. 21, sub-sect. 1), in the case of these ancient freeholds, any more than in the case of copyhold tenements, the incident of escheat is not specifically referred to in this section, and is not included under the general phrase “other manorial incident whatsoever.”

3. A tenant shall not be entitled to require an enfranchisement of any land under this act until after payment or tender—

Fines, &c.
to be paid
before
enfranchisement.

(a) in case the land is copyhold and an admittance thereto has not been made since the thirtieth day of June one thousand eight hundred and fifty-three, of such fine and of the value of such heriot (if any) as would become payable in the event of admittance on alienation subsequent to that day, and of two-thirds of such sum as the steward would have been entitled to in respect of the admittance; and

(b) in case the land is freehold (including

S. 3.

customary freehold) and subject to heriots and no heriot has become due or payable since the thirtieth day of June one thousand eight hundred and fifty-three, of the value of such heriot, if any, as would become payable in the event of an admittance or enrolment on alienation, subsequent to that day, and of two-thirds of such sum as the steward would have been entitled to for fees in respect of the alienation or admittance or enrolment; and

- (c) in every other case, of all fines and fees consequent on the last admittance to the land.

The Copyhold Act, 1852 (which received the royal assent on the 30th day of June, 1852), was the first act which conferred on the tenant of copyhold lands (sect. 1) or of ancient freehold lands (sect. 27) the right to require and compel an enfranchisement; and the right was originally conferred in these words:—

- (1.) In the case of copyholds,—“at any time after the next admittance which shall take place on or after the 1st day of July, 1853,”—the right was to arise; and
- (2.) In the case of ancient freeholds,—“at any time after such heriot shall be due or payable on or after the 1st day of July, 1853,”—the right was to arise.

So that, under that act, a tenant could neither compel an enfranchisement nor have an enfranchisement enforced upon him, unless upon an admittance taking place (in the case of copyholds) or upon a heriot falling due (in the case of ancient freeholds) after the 30th June, 1853; and these words imposed, therefore, a limit on enfranchisements.

The limit in question was removed by the Copyhold Act, 1858,—which (by sect. 6) provided, that from and after the 2nd day of August, 1858, the right to compel an enfranchisement on the part of either lord or tenant should exist,—and, notwithstanding the limit aforesaid imposed by the Act of 1852, be exerciseable,—even in cases where the last admittance (to the copyholds) had taken place, or the last heriot (in respect of the ancient freeholds) had fallen due or become payable, before the 1st day of July, 1853; but in removing this limit, the Act of 1858 (by sect. 6) imposed upon the tenant, as a condition precedent to his exercising the right to require and compel an enfranchisement, the payment or tender by him (in respect of the copyholds) of such a fine as would have become payable (in effect) on an admittance after the 1st July, 1853, and of two-thirds of the steward's fees which would have been payable thereon; or (in the case of ancient freeholds) the payment or tender by him of the amount of such a heriot as would have fallen due and been payable (in effect) on a death after the 1st July, 1853, and of two-thirds of the steward's fees which would have been payable thereon. And the Copyhold Act, 1887 (by sect. 9) continued this condition precedent; and the Copyhold Act, 1894 (by this present section) also continues it; and that is the whole effect of this section; and at the present day, few tenants can be so circumstanced as to fall within the provisions of the section.

S. 4.

4. A lord or tenant who requires enfranchisement under this act must give notice in writing, the lord to the tenant or the tenant to the lord, as the case may be, of his desire to have the land enfranchised.

Notice of
desire to
enfranchise.

Under this section, compulsory enfranchisements under the act originate with a notice by either party (lord or tenant) to the other party,—the notice being in the form

S. 5. (or to the effect of the form) in that behalf published by the Board of Agriculture, and being one or other of the official forms, Nos. 1 and 2, in Appendix hereunder.

The notice prescribed by this section is, of course, a wholly different notice to that prescribed by sect. 42 of the act,—this latter being Form No. 4 in the first schedule to the act. No tenant need take action upon the last-mentioned notice,—which is merely a notice from the lord (or his steward) to the tenant of the right of the latter to enfranchise, if he is so disposed; but upon the notice prescribed by this section, which is a notice to enfranchise, immediate action must be taken, that is to say, such proceeding as is hereinafter mentioned.

Compensation for Enfranchisement.

Proceed-
ings for
ascertain-
ing com-
pensation.

5.—(1.) When a notice requiring an enfranchisement has been given under this act, the compensation for the enfranchisement shall be ascertained in accordance with the provisions of this section.

As will be seen from the Forms of Notice to Enfranchise, Nos. 1 and 2 in the Appendix to this treatise, the notice when given in respect of copyhold tenements, defines or ascertains the tenement or tenements to be enfranchised by reference to the description thereof as contained in the last admittance of the tenant; and the notice, when given in respect of ancient freeholds, defines or ascertains the tenement or tenements to be enfranchised by a short description thereof contained in the schedule indorsed on the notice. And, the tenement being so defined, the first material step in the proceedings (to be taken pursuant to the notice given to enfranchise) is to ascertain the compensation payable by the tenant to the lord as the consideration for the enfranchisement of that tenement,—and which compensation is commonly called the enfranchisement consideration; and for the purpose of ascertaining that compensation, there must, of course, be a

valuation,—*scilicet*, unless the lord and the tenant can agree the amount. S. 5 (2).

(2.) The lord and the tenant may—

- (a) determine the amount of the compensation by agreement in writing ; or
- (b) agree in writing that the Board of Agriculture shall determine the amount ; or
- (c) appoint a valuer or valuers to determine the amount.

Provided that—

- (i.) if the compensation is not otherwise determined, it shall be ascertained under the direction of the board, on a valuation made by a valuer or valuers appointed by the lord and tenant ; but

The amount of the enfranchisement consideration may be agreed between the lord and the tenant,—provided the agreement be in writing ; and apparently lord and tenant may (under this section) so agree the enfranchisement consideration, although they are (or either of them is) entitled for a limited estate only (sect. 43), or otherwise than beneficially (sect. 44, sub-sect. 1).

But every such agreement is (in effect) subject to the control of the Board of Agriculture (Copyhold Department),—for the enfranchisement (as we shall see) can only be completed by an award of the board ; and before making such award,—or at all events, before confirming it,—the board will (under sect. 10) make such inquiries as are proper, and will also duly consider any application made to it in the matter.

The lord and the tenant may also (by agreement in writing) leave the amount of the enfranchisement consideration to be wholly ascertained by the board (see Official Form, No. 3, in the Appendix hereunder).

S. 5 (2). The agreement is not chargeable with stamp duty (sect. 58),—in either case.

When the amount of the enfranchisement consideration has not been agreed as aforesaid between the lord and the tenant, and they have not left the amount to be wholly ascertained by the board,—a valuation is the mode prescribed for ascertaining the amount of the enfranchisement consideration : and for the purposes of such a valuation, the lord and the tenant may, in general, appoint a valuer or valuers,—both agreeing upon a single valuer, or each appointing his own valuer ; but when the tenement or tenements which it is proposed to enfranchise are of the net annual value of 30*l.* only (as ascertained by the poor rate assessment), or are of a less annual value,—there is to be but one valuer appointed to ascertain (by the due valuation) the amount of the enfranchisement consideration ; and such one valuer is to be appointed by the justices of the peace ; and such single valuer, so to be appointed, is also to be the valuer to ascertain the enfranchisement consideration, when the only manorial incidents to be valued are heriots, rents, or licences (at fixed rates) to grant leases or to cut timber. However, even in these two excepted classes of cases, either the lord or the tenant may, if he desire it and will pay the additional expense occasioned thereby, have the amount of the enfranchisement consideration ascertained by a valuer or valuers appointed by the lord and the tenant in the usual way. And the amount of the enfranchisement consideration, when it is not otherwise ascertained, is in all cases to be ascertained under the direction of the board, upon a valuation to be made by a valuer or valuers appointed by the lord and the tenant in the usual way.

Where there are two valuers, they must, of course, appoint an umpire ; and they must do so before proceeding with the valuation ; and if they fail to do so,—for fourteen days after their own appointment as valuers,—the board will, on due application being made to them for that purpose, appoint the umpire.

A form of appointment of umpire,—(1) By the valuers, and (on their failure for fourteen days) (2) By the board, —is contained among the official forms (see Nos. 7, 9). S. 5 (2).

- (ii.) if the manorial rights to be compensated consist only of heriots, rents, and licences at fixed rates to demise or to fell timber, or of any of these, or the land to be enfranchised is not rated for the relief of the poor at a greater amount than the net annual value of thirty pounds, the valuation shall be made by a valuer to be appointed by the justices at petty sessions holden for the division or place in which the manor or the greater part of it is situate,—unless either party to the enfranchisement gives notice that he desires the valuation to be made by a valuer or valuers appointed by the lord and tenant, in which case he shall pay the additional expenses caused by that mode of valuation.

Where, as frequently happens in the case of ancient freehold tenements, the only manorial incident to be valued is a heriot, or a chief rent,—

Or where, as will sometimes happen in the case of copyhold tenements, the only manorial incident to be valued is a heriot, or a quit rent, or a licence (at some fixed rate) to grant leases or to cut timber,—

And in all cases where the tenement or tenements (whether ancient freehold or copyhold) which it is proposed to enfranchise are of the net annual value of 30*l*. only (as ascertained by the poor rate assessment), or are of a less annual value,—

The valuation is to be made by a single valuer, to be appointed by the justices of the peace,—in petty sessions

S. 5 (3), (4). assembled,—being the petty sessions for the division or place in which the manor (or the greater part of it) is situate,—

Subject only to this, that the lord or the tenant, desiring it and being willing to pay the additional expense occasioned thereby, may have the valuation made in the usual way, that is to say, by a valuer or valuers appointed by the lord and the tenant.

(3.) When a valuer is appointed by justices, a justice who is a lord of the manor shall not take any part in the appointment.

(4.) When the valuation is to be by a valuer or valuers appointed by the lord and tenant—

(a) The lord and the tenant may each appoint one valuer :

(b) They may appoint one and the same person :

(c) If either the lord or the tenant does not appoint a valuer within twenty-eight days after notice has been given to him by the other party to do so, or within such further time, if any, as the Board of Agriculture by order allow, the board shall appoint a valuer for him :

(d) The appointment of a valuer by either party cannot be revoked, except with the consent of the other party :

(e) Where there are two valuers they shall, before proceeding with the valuation, appoint an umpire :

(f) If they do not within fourteen days after their appointment appoint an umpire, the

Board of Agriculture shall appoint an umpire for them. S. 5(5).(6).

A form of joint appointment of one valuer, by lord and tenant,—is contained among the official forms (No. 4).

A form of appointment of one valuer by either the lord or the tenant, together with a form of notice of such appointment to the other party, will also be found among the official forms (Nos. 5, 6),—and it will be seen that the form of notice of appointment concludes by calling on the other party (lord or tenant, as the case may be) to appoint his valuer within twenty-eight days from the notice given, —failing which, the board will (under this sub-section), with or without first extending the time for the party himself to do so, appoint a valuer for the party in default. A form extending the time (No. 8), and a form of appointment by the board (No. 9), are contained among the official forms.

(5.) The Board of Agriculture may, on the application of either the lord or the tenant, remove a valuer or umpire for misconduct or for refusal or omission to act.

(6.) If a valuer or umpire dies, or becomes incapable, or refuses to act, or is removed, another valuer or umpire, as the case may be, shall, within a time to be fixed by the Board of Agriculture, be appointed in his place by the person and in the manner provided by this section with regard to the valuer or umpire in whose place he is appointed, and in default by the board. A valuer or umpire appointed under this provision may adopt and act upon any valuation or proceeding agreed on or completed by the valuer or valuers or umpire previously acting.

The appointment of a valuer by either party is irrevocable,—unless with the consent of the other party.

S.5 (7), (8). But on the application of either party, the board will (for due cause) remove a valuer (or, indeed, an umpire),—the cause of removal being either his omission (or refusal) to act, or his positive misconduct.

And on any such removal (or on the death or incapacity of a valuer, or simply on his refusal to act), the party whose valuer he was, appoints a new valuer,—and in case of his failure to make such new appointment, the board will make it for him.

Such new valuer may (in his discretion) take up the valuation at the point which it had arrived at immediately prior to his appointment,—adopting the previous proceedings and any results already arrived at therein; but he is, of course, free also to do otherwise.

And with regard to an umpire (whether appointed by the valuers or by the board itself), in case such umpire is guilty of any misconduct, or omits or refuses to act, the board will, on the application of the lord or of the tenant, remove him.

And on any such removal (or on the death or incapacity of the umpire to act, or simply on his refusal to act), the valuers are to appoint a new umpire,—and in case of their failure to make such new appointment, the board will make it for them.

Such new umpire may (in his discretion) take up the valuation at the point which it had arrived at immediately prior to his appointment,—adopting the previous proceedings and any results already arrived at therein; but he is, of course, free also to do otherwise.

(7.) Before a valuer or umpire enters on his valuation, he shall, in the presence of a justice of the peace, make and subscribe a declaration in the form mentioned in that behalf in the first schedule to this act.

(8.) The declaration made by a valuer or umpire must be annexed to the valuation.

(9.) If a valuer or umpire having made a declaration under this section wilfully acts contrary thereto, he shall be guilty of a misdemeanor.

S. 6.

The declaration appointed by this sub-section is merely to the effect, that the declarant will to the best of his ability and with entire integrity (that is, faithfully and truly) conduct the valuation,—hearing the evidence, &c., and determining the matters requiring to be determined.

The valuer or (as the case may be) each valuer, and also the umpire, is to make the declaration; and the declaration will be annexed to the valuation,—that is to say, the declaration of the umpire, if the valuation should be made by him: and the declaration of the valuer or (as the case may be) of each of the valuers, if the valuation is made by him or them.

6.—(1.) In making a valuation for the purpose of ascertaining the compensation for a compulsory enfranchisement under this act, the valuers shall take into account (and make due allowance for) the facilities for improvements, customs of the manor, fines, heriots, reliefs, quit rents, chief rents, forfeitures, and all other incidents whatsoever of copyhold or customary tenure, and all other circumstances affecting or relating to the land included in the enfranchisement, and all advantages to arise therefrom.

Circumstances to be considered by valuers.

Provided that they shall not take into account (or allow for) the value of escheats.

The object of the valuation being to ascertain the amount of the compensation to be paid to the lord for the enfranchisement,—that is to say, for what the lord in and by (or by the effect of) the enfranchisement grants or

S. 6. gives up to the tenant,—the valuation must take into account, and make due allowance for (*i.e.*, find the true value of, and what is the due compensation for) the following matters, that is to say:—

- (1) All facilities for improvement, resulting to the tenement from its discharge from the restrictions of the copyhold tenure,—which restrictions are usually of an embarrassing character, preventing or inconveniencing the granting of building leases, &c., &c., and the enfranchisement gets rid of them all (*b*); but in the case of ancient freeholds, this item will hardly (if at all) arise to be considered by the valuers,—this latter class of tenement being, in general, free from all such restrictions, even while unenfranchised:
- (2) Fines:
- (3) Heriots:
- (4) Reliefs:
- (5) Chief rents, or quit rents:
- (6) The lord's right to forfeitures:
- (7) The customs of the manor:
- (8) All other incidents of the tenure:
- (9) All other circumstances affecting or relating to the tenement: and generally
- (10) All advantages to the tenement which will arise from, or enure in consequence of, the enfranchisement.

But in no case is the lord's right of escheat to be taken into account in the valuation, or anything allowed in respect thereof,—and this is simply because (by sect. 21, sub-sect. 1 (*b*)) the lord's right of escheat (*scil.*, for want of heirs of the tenant *i.e.*, *per defectum sanguinis*) is not in any way affected by the enfranchisement.

Also, the enfranchisement not extending, as the general

(*b*) *Lingwood v. Gyde*, L. R. 2 C. P. 72; *Arden v. Wilson*, L. R. 7 C. P. 535; and consider *Richards v. Harper*, L. R. 1 Exch. 199.

rule, to include the lord's rights to mines and minerals, or to include those manorial incidents which are usually called franchises (sect. 23, sub-sect. 1), none of these matters will be taken into account in the valuation, or anything be allowed in respect thereof,—the lord's rights in respect of mines (or the tenant's rights in respect thereof), or these manorial franchises, not being in any way affected by the enfranchisement, in the general case. S. 6 (2).

The ten several matters above enumerated, however, will each be valued,—and will each be separately valued; and the valuers, or (as the case may be) the umpire, find their principal labour, in duly valuing these divers matters,—each of which is, in general, subject to considerations peculiarly applicable to itself, and which are mostly matters of evidence or of proof.

For the guidance of the valuers and umpire, the Board of Agriculture (pursuant to the provision in this behalf contained in sect. 66 of the Copyhold Act, 1894) have framed and caused to be published a scale of compensation, with directions for ordinary enfranchisements; and this scale is contained among the official forms hereunder (No. 26),—the scale being a fair and just one, and the directions expressed therein being calculated to facilitate the enfranchisement proceedings; but the scale is for guidance only, and is not binding in any particular case, but may (by agreement of the parties) be adopted. Usually, however, the scale requires to be supplemented,—in the case of each particular enfranchisement, by the consideration of other matters relevant to, and peculiarly relevant to, that enfranchisement.

Some practical observations, touching the due valuation of these specified ten items,—the due ascertainment of the compensation to be paid in respect of each item,—will be found in Part I., Chap. V., *supra*; and it is not convenient to here pursue that matter in detail.

(2.) The value of the matters to be taken into

S. 6 (2). account in the valuation shall be calculated as at the date of the notice to enfranchise.

It will be seen hereafter, that the compensation to be ascertained by the valuers or by the umpire as the enfranchisement consideration, although it is ascertained at a gross sum (sect. 7, sub-sect. 1), is payable, in the general case, by means of an annual rentcharge in perpetuity,—such rentcharge being (in its amount) the equivalent of interest at the rate of 4 per cent. per annum on the gross sum ascertained by the valuation (sect. 8, sub-sect. 1); and inasmuch as such rentcharge is, by the act, expressly made to commence as from the date of the notice given to enfranchise (sect. 8, sub-sect. 1), therefore it is, by this sub-section provided, that the ten several items above enumerated shall be valued *as at the date of the notice given to enfranchise*. And this provision is a just and reasonable one in itself (c); but it does not exclude the valuers or the umpire from taking into account,—and they must in fact take into account,—in their valuation, the prospective value of the tenement; for that is a circumstance which already, at the date of the notice given to enfranchise, affects or relates to the tenement; and the *then* prospective value must therefore be added in.

In any case where the compensation for the enfranchisement is payable in a lump sum,—as it may occasionally be,—it is (as we shall presently see) to be paid before “the completion of the enfranchisement” (sect. 8, sub-sect. 2); and the due receipt for it must be produced to the Board of Agriculture before the enfranchisement award is confirmed (sect. 10, sub-sect. 4); and the date at which (and as from which) the enfranchisement takes effect is the date of the award confirmed (sect. 10, sub-sect. 6), unless where the confirmation of the award itself

(c) *Salisbury (Marquess) v. L. & N. W. Rail. Co.*, (1892) 1 Ch. 75, n.; *Lowther v. Caledonian Rail. Co.*, (1891) 3 Ch. 443; (1892) 1 Ch. 73.

S. 7.

fixes (and it may fix) some other date. In the interval, therefore, between the notice given to enfranchise and "the completion of the enfranchisement,"—interest on the lump sum payable as the compensation for the enfranchisement (and interest at the rate of 4 per cent. per annum) ought, in reason, to be computed, and paid, by the tenant down to the date of his actual payment of the lump sum; but there is nothing in the act which expressly gives the lord this interest, or any interest, on that sum. And this matter is not unimportant; because the interval referred to may sometimes be considerable; and during that interval, the lord or the tenant may die, and a fine, relief, or heriot may (by reason of the death) accrue; and the act provides (by sect. 49, sub-sect. 2), that no such fine, relief, or heriot shall be payable; and (repeating in effect what it had already enacted in sect. 6, sub-sect. 2) the act expressly enacts, that (even in such a case) the compensation for the enfranchisement shall be ascertained as if the enfranchisement had been effected *immediately after the enfranchisement proceedings commenced*, that is to say, as at the date of the notice given to enfranchise. If therefore the lord is (and he appears to be) deprived during this interval of the fruits of his lordship,—those of them which are comprised amongst the matters to be taken into account in the valuation,—he ought manifestly to receive interest on the compensation payable, when that compensation is paid in a lump sum; and the interest will, apparently, be at 4 per cent. per annum.

7.—(1.) Valuers appointed for the purpose of ascertaining the compensation for a compulsory enfranchisement shall determine the value of the matters to be taken into account in the valuation at a gross sum of money.

Duties of
valuers.

The sum total of the separate amounts at which the several ten items taken into account in the valuation

S. 7 (2). have been therein valued will be the "gross sum of money" here referred to: it may happen, of course, that in some cases of enfranchisements all the ten matters referred to will not enter into,—but that some only of them will enter into,—the valuation; *e.g.*, chief rents (in the case of ancient freeholds) (*d*) and even quit rents (in the case of copyholds) (*e*) may have been wholly barred (and extinguished) by non-payment for twelve years; also, the tenement may never have been heriotable at all,—or the heriot (even where the tenement was once heriotable) may possibly have been extinguished (at least where the heriot was a heriot-service as distinguished from a heriot-custom) by lapse of time (*f*). And the "gross sum of money" will, therefore, be the sum total or aggregate of all such of the ten specified items as properly require to be taken into account in the valuation.

(2.) If the valuers do not agree as to the compensation or any point arising in the valuation, the valuers or either of them may refer the whole matter, or the point in dispute, to the umpire.

Having regard to what is stated in the notes to sect. 6, sub-sect. 1, and sub-sect. 2, and in the note to sub-sect. 1 of this present section,—it may well happen, that the valuers may not be able to agree as to some point arising in the valuation,—and consequently may not be able to agree as to the compensation for the enfranchisement; and in such case, they are to (or either of them may) refer the point in dispute (or even the whole matter) to the umpire; and there will usually be many other occasions for referring matters to the umpire. And in addition to these references of points arising in the valuation, the

(*d*) *Owen v. De Beauvoir*, 16 Mee. & Wels. 547; 5 Exch. 166.

(*e*) *Hovitt v. Harrington (Earl)*, (1893) 2 Ch. 497.

(*f*) *Chichester v. Hall*, 17 L. T. J. 121; *Lord Zouche v. Dalbiac*, L. R. 10 Exch. 172.

lord or the tenant may also insist, that any matter in dispute shall be referred to the Board of Agriculture S. 7 (3)-(6).
itself (sect. 53, sub-sect. 1).

(3.) The valuers shall give their decision within forty-two days after their appointment, or within such further time, if any, as the Board of Agriculture by order allow.

(4.) If the valuers do not give their decision within the time allowed by or in pursuance of this act, and do not refer the matter to the umpire, the Board of Agriculture may direct the umpire to act as valuer.

(5.) The umpire shall give his decision on any matter referred to him within forty-two days after the matter is referred to him.

An extension of time is not obtainable as a matter of course; but due reasons must be given for the extension. The extension is granted by order under the seal of the board.

The valuers, in lieu of referring the whole matter to the umpire, may permit their time (either their original six weeks' time or the extended time) to expire without making any valuation; and in that case, the whole matter of the valuation will, by order of the board, be sent to the umpire; and he will complete his valuation within six weeks thereafter.

(6.) The valuers or umpire shall make their decision in such form as the Board of Agriculture direct, and shall deliver the same (with the details thereof) to the Board, and shall also deliver copies of their decisions to the lord and to the tenant.

The valuation (as we have seen) is to find a gross sum of money as the enfranchisement consideration,—and

S. 7 (7). that gross sum is (as we have also seen) the sum total or aggregate of the divers separate amounts assessed in respect of the divers items separately enumerated in sect. 6, sub-sect. 1, as proper to be taken into account in the valuation.

Subject to that, the valuation may be in any form the board shall direct; and two such forms called respectively "the decision of the valuer or valuers" and "the decision of the umpire" are contained among the official forms (Nos. 10 and 11). The valuation is to be delivered to the board. And (as will be remembered) the valuation as so delivered will have the declaration of fidelity annexed thereto (sect. 5, sub-sect. 8); and will be accompanied with a full and detailed particular of the divers matters taken into account in the valuation, and of the considerations which the valuers have had regard to, in making their valuation.

The lord and the tenant are also (each of them) to receive a copy of the valuation.

(7.) If, in the opinion of the board, the valuation is imperfect or erroneous, they may remit it to the valuers or umpire, as the case may be, for reconsideration or correction.

The board having the valuation before them, together with such details as aforesaid,—and the lord and the tenant having (each of them) a copy of the valuation,—the board will consider the valuation; and may, either upon the application (or without any application) of either party, remit the valuation to the valuers or umpire, for re-consideration, if it appear to be imperfect; or for correction, if it appear to be erroneous. And under this sub-section,—as under section 11 of the Copyhold Act, 1887, for which it is in substitution,—the board is constituted the sole judge; and the board is not confined to seeing, whether or not the valuation has been made upon correct principles, but may question the correctness of

the "*gross sum of money*" itself found by the valuation (*g*); and for that purpose may receive any evidence that is relevant to the matter in issue, and is not limited to examining the details which have been sent to it along with the valuation (*g*).

S. 7 (8).

(8.) If either—

- (a) the valuers do not give their decision within the time allowed to them by or in pursuance of this act, and the valuation is not referred to the umpire, either by the valuers or either of them or by the direction of the board; or
- (b) the umpire does not give his decision within the time allowed to him by or in pursuance of this act; or
- (c) the valuers or the umpire do not, when a decision is remitted to them by the board for re-consideration or correction, amend it to the satisfaction of the board,—

the compensation shall be determined by the board after due notice to the lord and tenant.

And in case the valuation, having been so remitted as aforesaid under sub-section 7, is returned to the board, either unamended (*g*), or not sufficiently amended to the satisfaction of the board,—

As also in any case where a valuation fails to be, in fact, made,—either by the valuer or valuers or by the umpire,—within the time in that behalf prescribed or the extended time (if any) that may have been allowed,—

In any of these cases, the valuation is made by the board itself, after due notice to the lord and tenant,—the board, in the final resort, deciding the amount of the

(*g*) *Queen v. Land Commissioners for England*, 23 Q. B. D. 59.

S. 7 (9). enfranchisement consideration in all cases (*h*),—and, in fact, the valuation of the valuers or umpire is only the machinery used by the board (sect. 5, sub-sect. 2), and (on adoption or approval by the board) becomes,—but does not sooner become,—binding on the lord and the tenant respectively (*h*).•

(9.) Where the compensation is determined by the board, they shall take such proceedings and make such inquiries as they think necessary for the purpose, and shall take into consideration all matters which valuers are bound to take into consideration on a valuation under this act, and shall communicate the result in writing to the lord and to the tenant, and shall fix a time within which any objection to their determination may be signified to them in writing by the lord or tenant, and shall consider every objection properly made, and if necessary alter their determination accordingly.

But if the board is dissatisfied with the usual machinery for ascertaining the valuation (that is to say, is dissatisfied with the valuation of the valuer or valuers or of the umpire),—and in any case also where that machinery fails to work,—or where no such machinery has been called into existence, the lord and tenant having agreed (as they may do) to leave the amount of the enfranchisement consideration to be determined by the board itself,—

Then, and in any of these cases, the board (through one of its own officers, or, *semble*, through any one it may have specially commissioned in the matter) ascertains the “*gross sum of money*” to be paid as the enfranchisement consideration,—and this it does, by means of all the like proceedings and inquiries, and upon a consideration of all

(*h*) *Reg. v. Land Commissioners, supra.*

the like matters and items, as are usually had upon any ordinary valuation before valuers. And the board will also afterwards receive and consider any objections to its determination from either the lord or the tenant,—provided the objections be made in writing; and will (if and so far as justice requires) alter its determination.

S. 8.

8.—(1.) In either of the following cases, namely,—

Compensation to be a rent-charge in certain cases.

(a) where the enfranchisement is at the instance of the lord; or

(b) where the land can, in the opinion of the Board of Agriculture, be sufficiently identified, and the compensation amounts to more than one year's improved value of the land,—

unless the parties otherwise agree, or the tenant within ten days after the receipt by him of the draft of the proposed award of enfranchisement gives to the board notice in writing that he desires to pay the compensation in a gross sum, the compensation shall be an annual rentcharge, commencing from the date of the notice of enfranchise and issuing out of the land enfranchised, equivalent to interest at the rate of four per cent. per annum on the amount of the compensation.

(2.) Except where it is provided by this section that the compensation shall be charged by way of rentcharge, the compensation shall be paid in a gross sum before the completion of the enfranchisement.

Where the lord is the party who compels the enfranchisement, it has always been considered just, that the

S. 8.

lord should have a rentcharge only,—not a lump sum of money, as the enfranchisement consideration; and that rule is maintained by this section,—the tenant being, however, left free, even in that case, to pay (if he chooses to pay) the enfranchisement consideration in the form of a lump sum.

But seeing that the award of enfranchisement is required to state, whether the enfranchisement consideration is a lump sum or is a rentcharge, and (if a rentcharge) is to create same and to charge the enfranchised tenement therewith (sect. 10, sub-sect. 2),—therefore it is necessary that the tenant, if he desire to pay the enfranchisement consideration in the form of a lump sum, should give notice to the board of his intention in that behalf, and he is for that purpose allowed ten days after he receives the draft proposed award; and his notice is to be a written notice addressed to the board.

This section, however, goes beyond anything in the earlier Copyhold Acts (those prior to the Act of 1887), in giving (where it gives) the tenant, when he is the party who requires and compels the enfranchisement, the option of paying a rentcharge, instead of a lump sum, as the enfranchisement consideration. This option was first given to the tenant by the Act of 1887 (sect. 14), and this present section merely continues it. And if we regard what is most in the interest and for the benefit of the lord, he appears to be (upon the whole) better provided for by the rentcharge than if he received a gross sum of money,—that is to say, when the enfranchised tenement that is to be charged with the rentcharge is identified; and it is only in that case, that the option of the enfranchising tenant under this section arises.

When the land cannot, in the opinion of the board, be identified,—without (that is to say) proceedings under sect. 52 of the act,—the tenant requiring or compelling the enfranchisement is to pay the enfranchisement consideration in a lump sum; and he is also to pay the enfranchisement consideration in a lump sum when it does not

amount to more than one year's improved value of the tenement,—which may well happen when the fines are small and certain, or when only some heriot or chief or quit rent or some other like manorial incident is all that is to be compensated for.

S. 9.

9. On a compulsory enfranchisement, the tenant shall pay to the steward the compensation mentioned in the second schedule to this act.

Steward's compensation.

The compensation prescribed by this section is in respect of the loss sustained by the steward,—just as the enfranchisement consideration is in respect of the loss sustained by the lord.

The loss to the steward is, of course, in respect of his future fees,—those fees which he would have earned (or become otherwise entitled to) in respect of the tenant's subsequent dealings with the enfranchised tenement if it had remained unenfranchised.

The scale of compensation for this loss of the steward is therefore conceived on a very moderate basis,—being (as originally prescribed by the Act of 1887 and as simply repeated or continued by this Act of 1894) 1*l.* when the enfranchisement consideration does not exceed 10*l.*, 4*l.* when it does not exceed 25*l.*, 6*l.* when it does not exceed 50*l.*, 7*l.* when it does not exceed 100*l.*, and when the enfranchisement consideration exceeds 100*l.*, the compensation to the steward is 7*l.* plus an additional sum of 10*s.* for every additional 50*l.* (or fraction of 50*l.*) of the enfranchisement consideration.

But the above-mentioned compensation does not include the steward's disbursements on account of stamps, or on account of paper or parchment; nor does it include the costs and expenses of a map or plan (if any) of the enfranchised tenement; nor the steward's fees (if any) or his charges (if any) or his proper disbursements (if any), incident to or connected with the enfranchisement proceedings themselves, or incident to or connected with

- S. 10. his enrolment of the enfranchisement award on the court rolls.

Moreover, the steward will still remain entitled to make all proper charges for permitting the enfranchising tenant (or those claiming under him) to inspect the court rolls, even after the enfranchisement is completed; and for supplying him with copies of and extracts from the court rolls; and the act (by sect. 62) expressly provides for the right of the steward in these particulars continuing, and also expressly empowers the board to fix a scale of the fees to be paid to the steward for affording such inspection and for furnishing such copies and extracts.

Award of Enfranchisement.

Board
to make
award of
enfranchisement.

10.—(1.) When the compensation for a compulsory enfranchisement has been ascertained under the provisions of this act, the Board of Agriculture, having made such inquiries as they think proper, and having considered any applications made to them by the parties, may make (in such form as they provide) an award of enfranchisement on the basis of the compensation, and may confirm the award.

A compulsory enfranchisement under the act is to be completed by an award,—to be made by the board, and to be confirmed by the board.

Before making such award, the enfranchisement consideration must, of course, have been finally ascertained,—that is to say, the board must have satisfied itself that the valuation of the valuers is correct and perfect, and must have heard and considered any objections thereto; or if the board has itself determined the amount of the compensation, it must have heard and considered any objections thereto; for it is only then that the compensation becomes ascertained, *i.e.*, finally ascertained.

(2.) The award shall state whether the compensation is a gross sum or a rentcharge, and the amount thereof; and where it is a rentcharge, shall make the land subject thereto and chargeable therewith. S. 10 (2).

The provisions of this sub-section become plain, upon a perusal of the forms of awards included among the official forms hereunder,—there being three such forms, of which two are for copyholds, and one for ancient freeholds. (See Forms, Nos. 19, 20, 21, in Appendix.)

Of the two copyhold enfranchisement forms, one is where the compensation is payable in a lump sum; and it will be observed, that that form (in compliance with this sub-section) states that the enfranchisement consideration is a lump sum; and it states also (as required in such a case, by the 4th sub-section of this section), that the receipt for such enfranchisement consideration has been produced to the board.

The other of the two copyhold enfranchisement forms is applicable when the compensation is payable in the form of a rentcharge; and it will be observed, that that form (in compliance with this sub-section) states, that the enfranchisement consideration is a rentcharge, and also makes the enfranchisement tenement subject to and chargeable with the rentcharge,—the words used for this purpose being “to be holden, *subject to the payment of the said annual rentcharge*, as freehold,” and so forth.

The form of award for ancient freeholds specifies the heriot or other manorial incident which it is the object of the enfranchisement to extinguish; and it expressly “*extinguishes*” such heriot or other manorial incident, and also all other manorial incidents; and it purports also to “release and enfranchise” the tenements therefrom,—saving, of course, the right of escheat. The form given is applicable only when (as will usually be the case) the enfranchisement consideration is a lump sum. And it

S. 10 (3). should be particularly observed, that the form does not (although the two copyhold forms, each of them, do) contain any reference to "*the rights reserved by sect. 23*" of the act, that is to say, the mines and minerals, and the lord's franchises: and this is, *semble*, because, as regards the mines and minerals, there are no words in the ancient freehold award (like as there are words in the two copyhold awards) to pass to the tenant the mines (if he is not already, and usually he is already, the owner thereof); and because, on the true construction of the ancient freehold award (having regard to the recitals contained therein, and to the express provisions of the Copyhold Act, 1894, ss. 2 and 23), the lord's franchises must be taken not to be affected thereby. Possibly, however, it would have saved any question from arising, if the official form had, by express words, made this matter clear.

(3.) The board shall fourteen days before confirming the award send to the tenant and to the steward, unless the proposed award has been already perused by them respectively, a copy of the proposed award.

When the board is said to "*make*" an enfranchisement award,—the phrase means that the board makes a *draft* award: and the draft award, so made, is really only a draft *proposed* award,—which draft proposed award will, in the general case, be perused and approved by the parties, and returned to the board,—for the board to make and confirm it. And this present sub-section provides, that, when the draft proposed award has not been so previously perused and approved by the parties, the board shall send to them a copy of the proposed award as made by the board, and shall leave them fourteen days to consider it; and the board is not to confirm the award, until after such fourteen days are expired; and in the meantime, the parties (or either of them) may object to

anything in it, and the board will thereupon consider the objection, and postpone its confirmation of the award.

S. 10
(4)-(6).

(4.) Where the compensation is a gross sum, the award shall not be confirmed until the receipt of the person entitled to receive the compensation has been produced to the board.

A form of the receipt referred to in this sub-section is contained among the official forms hereunder. (Form, No. 13.)

(5.) The board shall send a copy of the confirmed award sealed or stamped with the seal of the board to the lord, and the lord shall cause the copy to be entered on the court rolls of the manor.

The award as made and confirmed by the board is under the seal of the board: and it carries the same stamp as an enfranchisement deed would carry (sect. 58); that is to say, an *ad valorem* stamp on the amount of the enfranchisement consideration,—the enfranchisement being for this purpose treated as being (which, in fact, it is) a purchase deed.

The board retains the original award,—to deliver out to the tenant, on his payment of the office fees and expenses of the board (sect. 59); and sends a copy of it (authenticated with the seal of the board, sealed or stamped thereon) to the lord,—for enrolment on the court rolls; and the lord is under a duty (by this section) to enrol the enfranchisement award accordingly, and from the copy thereof so sent.

(6.) The date at which a compulsory enfranchisement shall take effect may be fixed by the confirmation of the award of enfranchisement,

- S. 11. and if not so fixed, shall be the date of the confirmation of the award.

Where the confirmation of the award is unduly postponed,—by reason, *e.g.*, of objections to the proposed award as made by the board,—it is (or may be) proper, that the enfranchisement should take effect on some day earlier than the day of the date of the confirmation of the award; and, conversely, for any sufficient reason in that behalf, the enfranchisement might properly be made to take effect on some later day than the day of the date of the confirmation of the award; and this may be done in the award itself as confirmed,—that is to say, the words, “*To be holden as freehold, HENCEFORTH and for ever discharged,*” &c. (being the usual words in the award) may, in such a case, be made to read as follows:—“*To be holden as freehold as from the day of , 19 , and THENCEFORTH and for ever discharged, &c.*”

But, in the general case, the enfranchisement will take effect from the date of the confirmation of the award, as expressed in the *testimonium* thereof,—the rentcharge commencing, however, as from the date of the notice given to enfranchise, which (so far as regards the lord) renders the actual date of the confirmation unimportant.

Restrictions on Enfranchisement.

Power for lord in certain cases to purchase tenant's interest.

11.—(1.) Where a notice requiring the enfranchisement of any land under this act is given by the tenant, and the lord shows to the satisfaction of the Board of Agriculture, that any change in the condition of the land, which but for the enfranchisement would or might be prevented by the incidents or conditions of the tenure of the land, will prejudicially affect the enjoyment or value of the mansion house, park, gardens, or

pleasure grounds of the lord, the lord may give to the tenant notice in writing that he offers to purchase the tenant's interest in the land. S 11 (2).

The enfranchisement has for one of its effects, to discharge the tenement from the restrictions incident to the copyhold tenure; and it is chiefly in respect of the discharge of these, that the act expressly directs, that all "*facilities for improvement*" resulting from the enfranchisement, and all other "*advantages to arise therefrom*," shall be taken into account (and duly allowed for) in ascertaining the enfranchisement consideration (sect. 6, sub-sect. 1). Now, it will occasionally happen that, if the copyhold land should, after being enfranchised, be, for example, converted into a building estate, such a change in the condition of the tenement would, in a very material way, prejudicially affect the enjoyment and value of the lord's mansion house and park, gardens and pleasure grounds, within the meaning of the sub-section; and where the lord shows to the satisfaction of the board, that the change will have that hurtful effect, then he may forestall the enfranchisement, by purchasing up the copyhold,—and for that purpose he is to make a written offer to the tenant to purchase his tenement.

(2.) If the tenant accepts the offer, he shall do so by sending to the board, within twenty-eight days after he has received notice of the offer, notice in writing of his acceptance; and thereupon the offer and the acceptance shall be binding on the lord and the tenant.

If the written offer of the lord to buy is accepted by the tenant, he is to signify to the board that he has accepted the lord's offer; and thereupon a binding contract of sale is constituted.

The tenant accepts the lord's offer within twenty-eight

S. 11
(3) (4).

days after receiving it; but an extension of time would be granted by the board, on due grounds being shown therefor; and such extension of time is given by order under the seal of the board; and a form of such order is contained among the official forms hereunder. (Form, No. 8.)

(3.) If the tenant does not accept the offer, the enfranchisement shall not take place, unless the board think fit to impose such terms and conditions as are in their opinion sufficient to protect the interests of the lord.

On the other hand, the tenant may not choose to accept the lord's offer: and in that case, the lord cannot, of course, purchase up the tenement.

But the board will, in such case, protect the lord from the apprehended damage, either—

- (1) By neglecting to entertain (or to confirm) the enfranchisement; or
- (2) By annexing to the tenement, when enfranchised, such restrictions upon the user thereof as shall (in the opinion of the board) be required to prevent the apprehended damage, and to protect the lord therefrom.

(4.) Where a purchase is being made under this section, if the consideration for the purchase is not (within a time allowed by the board) settled by agreement between the lord and the tenant, the board may appoint a valuer to ascertain the value of the tenant's interest, or may refer it to the valuers, if any, acting in the enfranchisement.

The lord's offer to buy need not specify any price at which he is prepared to buy; but that price may afterwards be agreed upon between him and the tenant; and

failing their agreeing it, the board will ascertain it,—by means of a valuer specially appointed by the board for the purpose, or by means of the valuers acting in the enfranchisement proceedings, if any such shall have been appointed. The board will, for this purpose, be put in motion by one or other of the parties,—and will proceed to act, after limiting a time within which the parties must agree the purchase-money, if it is to be agreed at all; but the board will not, in general, proceed until after the expiration of the time so limited.

S. 11
(5)-(6).

(5.) When the value of the tenant's interest has been agreed on or ascertained, the board shall issue, under their seal, a certificate which shall define the land included in the purchase, and shall state the consideration for the purchase, and fix a time for the payment of the consideration.

(6.) On the payment of the consideration, the tenant shall execute a conveyance of his interest in the land to the lord in such form as the board directs; and on the execution of the conveyance, the land shall vest in the lord accordingly.

The purchase price being fixed (either by agreement of the parties or otherwise), the board thereupon issues a certificate under its official seal; and in and by such certificate, the land included in the purchase is defined, and the price is stated, and a time for its payment fixed.

Then, in due course, and on payment by the lord of the purchase-money, the tenant conveys the tenement to the lord,—the form of conveyance to be used for this purpose, being settled by the board,—or, at least, being settled by the board in case the parties differ as to the form thereof; and upon the execution of such conveyance, the tenement becomes vested in the lord.

S. 11
(7) (8).

(7.) If the consideration is not paid within the time fixed by the certificate or such further time as the board allow, and the board are of opinion that the non-payment arises from the default of the lord, they may cancel the certificate; and thereupon the enfranchisement shall be proceeded with (but subject to the provisions of this section as to expenses) as if this section had not been passed.

In case the lord has offered to buy, and the tenant has accepted his offer,—and then, after certificate of the board issued, the lord neglects to pay the price mentioned in the certificate, within the time thereby appointed for payment (or any duly granted extension of such time),—in such a case, if the board is satisfied that the non-payment is wholly through the lord's default, the board may (but, apparently, in its own discretion may decline to) cancel the certificate. And if the board do not cancel the certificate, the matter is brought to a standstill. But if the board cancels the certificate, then the enfranchisement is to proceed,—regardless of any prejudice to the lord, that is to say, as if sect. 11 were not in the act at all; and in that case, the lord would only be able to protect himself against the apprehended damage,—if he could protect himself at all,—either by obtaining (under sect. 12) a suspension of the enfranchisement proceedings, or (under sect. 13) a continuance of any restrictive conditions (if there should be any) to which the land, as originally granted, was subject.

(8.) Where a purchase is made under this section, all the costs of the valuation and all the expenses attending the purchase, including the expenses of the conveyance, shall be paid by the lord.

When the lord duly completes his purchase of the copyhold, he pays to the tenant all the expenses of the latter

of and incident to the purchase and of and incident to the conveyance of the land purchased; and he pays, of course, his own expenses; and he pays, also, all the costs and expenses of the valuation and of the other incidental proceedings.

S. 12.

(9.) Where a purchase is, by the default of the lord, not completed, all expenses which the board certify to have been incurred by the tenant in consequence of the offer, acceptance, and default shall be paid to the lord by the tenant.

And where the lord fails to complete his purchase,—and the failure to complete arises purely from his own default,—the board will, on the application of the tenant, certify the amount of the costs and expenses of the latter of and incident to the lord's offer to buy, the tenant's acceptance of that offer, and the lord's failure to complete; and the lord is to pay to the tenant the amount so certified,—in addition to which the enfranchisement is to proceed, and (as we have seen), regardless of any prejudice to the lord.

12.—(1.) The Board of Agriculture may suspend any proceedings for a compulsory enfranchisement under this act, where any peculiar circumstances make it impossible, in their opinion, to decide on the prospective value of the land proposed to be enfranchised, or where any special hardship or injustice would unavoidably result from the compulsory enfranchisement.

Power for board to suspend enfranchisement in certain cases.

The prospective value of the tenement is one of the "*circumstances affecting or relating to the land*" that are appointed (by sect. 6, sub-sect. 1) to be taken into account in ascertaining the enfranchisement consideration. And

S. 12 (2). where (in the opinion of the board) such prospective value cannot, by reason of peculiar circumstances, be definitely ascertained, then the board may (in its discretion) suspend the enfranchisement proceedings; but the board may also (in its discretion) decline to suspend the proceedings,—in which latter case, the enfranchisement must proceed, and the enfranchisement consideration be ascertained, as best it may.

Also, generally, where any “*special hardship or injustice*” would result from any particular enfranchisement,—and would inevitably so result,—the board may (and most probably would) suspend the enfranchisement proceedings; and this provision might possibly apply to protect the lord against the apprehended damage to his mansion house which sect. 11 was intended to protect him against,—and might possibly be so applied, even in a case where the lord should have made default in completing his contract to purchase the tenement under that section.

It is difficult to say, what other hardship or injustice of a special nature could inevitably result to the lord from an enfranchisement. And as regards any hardship or injustice to the tenant,—being hardship or injustice of a special nature,—it is difficult to see, what special hardship or injustice can possibly result to the tenant from enforcing him to enfranchise (*i*).

(2.) Where the board suspend a proposed enfranchisement under this section, they shall state their reasons for doing so in their annual report, which is by this act directed to be laid before parliament.

And the circumstances must be very special indeed which are to induce the board to suspend the enfranchisement proceedings, on whichever of the two grounds

(*i*) *Reynolds v. Woodham Walter (Manor)*, L. R. 7 C. P. 639.

referred to in the first sub-section of this section, the suspension is directed; and, accordingly, the board is required, by this second sub-section, to state in their annual report to parliament the reasons which have led them to suspend the enfranchisement proceedings in any particular case or cases.

S. 13.

13. On a compulsory enfranchisement under this act, in any case where the tenant was admitted subject to any condition affecting the user of the land and imposed for the benefit of the public or of the other tenants of the manor, and in the opinion of the Board of Agriculture some special hardship or injustice would result if the land were released from the condition, the board may continue and give effect to the condition by the award of enfranchisement.

Power for
board to
continue
conditions
as to user

But certainly special hardship or injustice might in particular cases result from an enfranchisement, if thereby the restrictions upon the user of the land, which were imposed in the original grant thereof, were removed; and the particular cases in which this hardship or injustice would be peculiarly felt would be cases in which the restrictions had been imposed for the benefit of the other tenants of the manor or of the general public. And, accordingly, when the board is satisfied that this would be the case, the board may, in and by the enfranchisement award, continue and give effect to these restrictions upon the user of the enfranchised tenement, and may attach them to such tenement,—so that they will run with it, into whosoever's hands it may come. But, of course, the maintenance of these restrictions will materially diminish the amount of the compensation to be paid as the enfranchisement consideration (*k*).

(*k*) *Lingwood v. Gyde*, L. R. 2 C. P. 72; and see pp. 147, 157, and 178, *supra*.

PART II.—VOLUNTARY ENFRANCHISEMENT.

S. 14.

Power
to effect
voluntary
enfranchi-
sement.

14.—(1.) The lord of any manor may with the consent of the Board of Agriculture enfranchise any land held of the manor, and any tenant may with the consent of the board accept an enfranchisement of his land.

(2.) The enfranchisement may be on such terms as (subject to the provisions of this act) are settled by agreement between the lord and the tenant.

Voluntary enfranchisement under the act is different from voluntary enfranchisement at common law; and the chief difference between the two consists in (and arises from) this, namely, that limited owners may, under the act, and subject to the act, enter into valid agreements for enfranchisement, but such owners may not, in general,—that is to say, may not unless specially authorized in that behalf,—enter into enfranchisement agreements at the common law.

For other differences (some of them of a most material importance) between a voluntary enfranchisement under the act and a voluntary enfranchisement at common law, the reader is referred to Chapter I. pp. 14 to 27, *supra*, and to the notes to the subsequent sections of this act.

It is important to observe, upon these two sub-sections of this present section, that the tenant who is referred to must (in the case of copyholds) be the admitted tenant,—for the lord knows of no other; nor is a copyhold owner a tenant (that is to say, a complete tenant), unless he is on the court rolls of the manor as tenant of the copyhold; and (in the case of ancient freeholds) no admission being ever made in respect of these, but only some entry or enrolment of the ownership thereof,—it is the tenant (and he only) who, according to the entry or enrolment, is the

owner that is referred to, for he (and he only) is completely tenant. S. 14 (3).

And although the lord might (at his option) enfranchise to the copyhold owner without first admitting him (*l*), and enfranchise to the ancient freehold owner without first entering or enrolling him as such,—still that is not for the benefit of the tenant, nor so advantageous to him as if (being a copyholder) he was first admitted as such, or (being an ancient freeholder) he was first entered or enrolled as such,—the title under the enfranchisement not being so good (or clear from objection), when it is made to the incomplete tenant, as when it is made to one who is already completely tenant (*m*).

(3.) If the estate of the lord or of the tenant parties to the enfranchisement is less than an estate in fee simple in possession or corresponding copyhold or customary estate, and the tenant has not paid the whole of the cost of enfranchisement, the lord or tenant respectively shall give notice in writing of the proposed enfranchisement to the person entitled to the next estate of inheritance in remainder or reversion in the manor or land to be affected by the enfranchisement.

Where the manor is settled on A. for life with remainder to B., and A. enters into the enfranchisement agreement, then he is to give notice thereof to B.,—unless indeed the tenant is (by the agreement) to pay the whole cost of the enfranchisement; in which latter case B. can in no way be hurt by the enfranchisement, and therefore need not receive notice of the enfranchisement agreement.

(*l*) *Wilson v. Allen*, 1 J. & W. 611.

(*m*) *Doe d. Milner v. Brightwen*, 10 East. 583.

S. 15.

Similarly, where the tenement is settled on X. for life, with remainder to Y., and X. enters into the enfranchisement agreement, then he is to give notice thereof to Y.,—unless indeed X. is (by the agreement) to pay the whole cost of the enfranchisement; in which latter case, Y. can in no way be hurt by the enfranchisement, and therefore need not receive notice of the enfranchisement agreement.

By the phrase "*the whole cost of enfranchisement*," as used in this sub-section, is clearly intended not only the expenses of and incident to the enfranchisement, and of and incident to the deed of enfranchisement whereby (and by the enrolment of such deed) the enfranchisement is completed, but also the compensation to the lord and to the steward respectively payable for and in respect of the enfranchisement.

The notice to be given by A. to B., or (as the case may be) by X. to Y., of the enfranchisement agreement is to be in writing; and the object of giving this notice is, that B. or (as the case may be) Y.,—or both B. and Y.,—may (if so disposed) send to the board (which they may do in writing addressed to the board) his or their objections to anything contained in the enfranchisement agreement, or his or their assent to or dissent from that agreement or in respect of anything contained therein.

All which objections (if any) will be duly considered by the board,—and the dissent (if any) will be taken into account by the board,—before the board consents to and executes the enfranchisement deed as explained hereafter in the notes to sect. 16, sub-sect. 2 and sub-sect. 3.

Consideration for voluntary enfranchisement.

15.—(1.) The consideration for a voluntary enfranchisement under this act may be either—

- (a) a gross sum payable at once or at any time fixed by the agreement; or

- (b) a rentcharge, charged on and issuing out of S. 15 (2).
the land enfranchised ; or
 - (c) a conveyance of land or of a right to mines
or minerals ; or
 - (d) a conveyance of a right to waste in lands
belonging to the manor ;
- or may be provided partly in one and partly in
another or others of those ways.

In a compulsory enfranchisement, the enfranchisement consideration invariably consists of a money payment,—whether in the form of a lump sum or of a rentcharge ; but in a voluntary enfranchisement, the enfranchisement consideration may consist either of a money payment (payable in a lump sum or reserved by way of rentcharge), or (according as the enfranchisement agreement shall express) of any one or other of the following equivalents (or partly of a money payment and partly of one or other of the following equivalents), that is to say—

- (1.) Land parcel of the manor ;
 - (2.) Land not parcel of the manor ; but where the manor is in settlement, this land must be land which (in the opinion of the board) may conveniently be held with the manor ;
 - (3.) Mines and minerals, within or under the land enfranchised ;
 - (4.) Mines and minerals, not within or under the land enfranchised ; but when the manor is in settlement, these mines and minerals must be mines and minerals which (in the opinion of the board) may conveniently be held with the manor ; or
 - (5.) Rights of waste in lands belonging to the manor.
- (2.) Land or a right to mines or minerals subject to the same or corresponding uses and trusts

S. 15 (3). with the land enfranchised may be conveyed as consideration under this section.

And by sub-sect. 2 of this section, the tenant, although only a limited owner of the land or mines and minerals, is enabled to convey them to the lord,—provided they are settled to the same or the like uses as the enfranchised tenement.

(8.) Where the estate of the lord is less than an estate in fee simple in possession, and land not parcel of the manor, or a right to mines or minerals not in or under the land enfranchised, is conveyed as consideration under this section, the land or right must be convenient (in the opinion of the Board of Agriculture) to be held with the manor, and must be settled to uses or on trusts identical with or corresponding to those to or on which the manor is held.

When the manor is in settlement, the land (parcel of the manor), or the mines and minerals (within or under the enfranchised lands), or the rights of waste (in lands belonging to the manor), will (when conveyed by the tenant to the lord) enure to the uses, and be held upon and for the trusts and purposes, to and upon and for which the manor is held,—and that, apparently, without the conveyance so expressing, although the conveyance may, of course, so express it.

And when the manor is in settlement, and the land or mines and minerals which are conveyed by the tenant are respectively not parcel of the manor, or not within or under the enfranchised lands, then the conveyance thereof to the lord is required to express, that the land or mines and minerals comprised therein are thereby conveyed, and that the conveyance thereof thereby effected is to enure, to the same or the like uses, and upon and

for the same or the like trusts and purposes, as the manor itself is held.

S. 16.

16.—(1.) A voluntary enfranchisement under this Act may be effected, with the consent of the Board of Agriculture, by such a deed as would be proper on an enfranchisement by a lord seised of the manor for an absolute estate in fee simple in possession.

Voluntary enfranchisement to be by deed.

A form of the deed of enfranchisement appointed by this section is comprised among the official forms hereunder, two such forms being given, that is to say,—

(1.) Form (No. 22) applicable for copyholds; and

(2.) Form (No. 23) applicable for ancient freeholds.

And upon a reference to these forms, it will be seen, that the board is a party to the deed in either case, equally with the lord and tenant,—the lord, with the consent of the board, enfranchising and releasing in the one case to the tenant the copyhold hereditaments, and the lord, with the consent of the board, extinguishing in the other case the specified heriot or chief rent, and all other manorial incidents, and also releasing and enfranchising to the tenant the ancient freehold hereditaments; and the deed in each case expressly saves the lord's right of escheat; but it is again only in the copyhold enfranchisement, and not also in the ancient freehold enfranchisement, that any reference is made to the "*rights reserved by sect. 23 of the act*,"—just as in the corresponding enfranchisement awards. (See the notes to sect. 10, sub-sect. 2, *supra*, p. 191.)

(2.) Where any person is entitled to notice of the proposed enfranchisement, the assent or dissent or acquiescence of that person in respect of the enfranchisement may be stated in writing to the Board of Agriculture when the enfranchisement

S. 16 (3). deed is sent to them for confirmation. If any dissent in writing has been expressed, the board shall withhold their consent to the deed, until they have made further inquiries and are satisfied that the agreement is not fairly open to objection.

(3.) The board may in every case cause any such further notices to be given and inquiries to be made as they think proper, before consenting to the enfranchisement deed.

The draft of the enfranchisement deed is prepared and settled between the lord and the tenant, and such draft (or the engrossment thereof) will be in due course submitted to the board for the board's approval; and the board (as we have seen) is a party to that deed, and in due course executes same; but, apparently, the board must first confirm the enfranchisement deed (still being in the stage of a draft only or of an engrossment only); and it expresses its confirmation by the memorandum of confirmation referred to in sect. 20, *infra*.

And under this present sub-section 2, the board, in case any dissent in writing has been signified to the board under sect. 14, sub.-sect. 3, will delay confirming the deed until by means of further enquiries and otherwise it has satisfied itself that the enfranchisement agreement (which the enfranchisement deed carries out) is not fairly open to objection.

And under sub-sect. 3 of this present section, the board may, even where no such dissent has been signified, and where no objection has been made to the enfranchisement agreement by any of the parties entitled to object, delay confirming the deed pending any further enquiries the board may think fit to make, and pending any further notices the board may cause or direct to be given, touching or concerning the pending enfranchisement.

17. Where any part of the consideration for a voluntary enfranchisement under this act is a rentcharge,—

S. 17.
Provisions
for rent-
charges
under Act.

(1.) The rentcharge may be—

(a) A fixed annual sum ; or

(b) Where it exceeds the sum of twenty shillings, an annual sum varying with the price of corn and calculated upon the same averages and variable in like manner as a tithe commutation rentcharge ; and

(2.) The rentcharge may be made subject to an increase or diminution to be stated in the enfranchisement agreement, or afterwards fixed by valuers in any event which is provided for by the agreement ;

By sect. 15, sub-sect. 1, where the enfranchisement consideration consists of a money payment payable in the form of a rentcharge, the rentcharge is to be charged on, and to be issuing out of, the enfranchised land.

And under the same section and sub-section, the enfranchisement consideration may consist in part of such a rentcharge.

Under this present section, when the enfranchisement consideration consists in part (or, *semble*, when it consists wholly) of such rentcharge, then it is to be an annual rentcharge, and, in general, of fixed amount ; but when it exceeds twenty shillings by the year, it may be made to be of varying amount, the variation being like that of a tithe commutation rentcharge, that is to say, varying with the price of corn, and calculated upon the corn averages. Also, in every case where the enfranchisement agreement so provides (which it may do, but will not in general do), the amount of the rentcharge may be 5*l.* per annum for the first ten years (or for any other years, or number of

S.17(3)(4). years), and afterwards, or at other times, may be 7*l.* per annum (or 3*l.* per annum), according as the enfranchisement agreement shall provide. - Also, in every case where the enfranchisement agreement so provides (which it may do, and will in a proper case do), the amount of the rentcharge may, in the first instance, be a fixed figure (say 7*l.* per annum), and may (by the enfranchisement agreement) be rendered liable to be subsequently altered, by way either of increasing it or of diminishing it, as the valuers in that behalf provided for by the enfranchisement agreement shall (or may), in the event happening which is in that behalf mentioned in the enfranchisement agreement, determine.

(3.) The tenant may grant the rentcharge by deed to the lord and his heirs, to the uses on the trusts and subject to the powers and provisions subsisting at the date of the enfranchisement with respect to the manor of which the land enfranchised is held ; and

(4.) The rentcharge may be charged on all or any part of the land enfranchised.

The rentcharge (whether of such fixed or variable amount as aforesaid, and whether liable to such increase or decrease as aforesaid),—when it is part of (or, *semble*, when it is the whole) enfranchisement consideration,—may be charged on all or any part of the enfranchised lands ; and it is so charged by deed,—the tenant by deed granting it to the lord and his heirs (that is to say, to the lord in perpetuity), but so as that (if the manor is then in settlement) the grant shall enure (and be expressed to be made to enure) to the uses or upon the trusts and with and subject to the powers and provisions to and upon and with and subject to which the manor is settled or held.

And this charge the tenant may, of course, create, although his own estate in the enfranchised lands is less

that the fee simple or customary fee simple estate therein, —these present sub-sections giving him full power in this particular. Ss. 18, 19.

18. Where any part of the consideration for an enfranchisement under this act is the conveyance of land or of a right to mines or minerals, or of a right to waste, the tenant may convey the land or right to the lord and his heirs, to the uses on the trusts and subject to the powers and provisions subsisting at the date of the enfranchisement in respect of the manor of which the land enfranchised is held. Provisions where land is conveyed as consideration under this Part.

And similarly, when any part of the enfranchisement consideration (or, *semble*, when the enfranchisement consideration) consists of such land, or of such mines and minerals, or of such right to waste as is referred to in sect. 15, *supra*, the tenant is by this section enabled,—although his own estate in such land, or mines and minerals, or right of waste, should be less than the fee simple or customary fee simple estate,—to convey the land, mines or minerals, and right of waste to the lord and his heirs, but so that (if the manor is then in settlement) the conveyance shall enure (and be expressed to be made to enure) to the uses and upon the trusts and with and subject to the powers and provisions to and upon and with and subject to which the manor is settled or held.

19.—(1.) Where a voluntary enfranchisement is effected under this act, the land enfranchised shall be charged with every sum payable to the lord in respect of the enfranchisement, with interest thereon from the day fixed by the Enfranchisement consideration to be a charge on land till paid.

S. 19 (2)(3) enfranchisement deed for payment thereof until payment thereof.

(2.) The lord shall be deemed to be seised of the land subject to a charge under this section as mortgagee in fee, and may distrain on the land for any interest due in respect of the charge as if it were rent in arrear.

(3.) A charge under this section shall be a first charge on the land subject thereto, and shall have priority over all incumbrances whatsoever affecting the land (except tithe rentcharge and any charge having priority by statute), notwithstanding that those incumbrances are prior in date.

Under sect. 36, sub-sect. 1, the enfranchising tenant may, with the consent of the lord, charge the enfranchised lands with (or with any part of) the compensation payable to the lord, that is to say, with (or with any part of) the enfranchisement consideration (when it consists of a money payment payable in one lump sum).

Under this present section, such compensation (when it is not paid, but usually it will be paid, on or prior to the execution of the enfranchisement deed) is made a charge on the enfranchised lands, together with interest thereon to be computed from the day when it ought to have been or to be paid (as fixed or expressed in the enfranchisement deed) down to the day of the actual payment thereof—this provision (in effect) recognizing the lord's lien on the enfranchised land for the compensation money remaining unpaid, and whether it is expressed or not expressed in the enfranchisement deed to have been paid; and this lien is made a first charge on the enfranchised lands (except as against tithe rentcharge, and any other charge that may have statutory priority); and the lord is to be deemed a first legal mortgagee of the lands accordingly,

with power also to distrain thereon for any arrear of interest due on his charge, equally as a landlord may distrain on his tenant for rent in arrear. S. 20.

Apparently, therefore, the lord's rentcharge under sect. 17 is entitled under this section to the priority aforesaid; and any arrear of such rentcharge, together with interest thereon from the date when the instalment fell due, may, *semble*, be distrained for.

And under this section, it is not merely the compensation money aforesaid (whether payable in a lump sum or by means of a rentcharge as aforesaid) for which the lord is constituted such mortgagee as aforesaid, with such power of distress as aforesaid,—but it is “*every sum payable to the lord in respect of the enfranchisement*,”—a phrase which would extend to include also any sum payable by the tenant for the lord's expenses of the enfranchisement proceedings,—whether the tenant's liability to pay these expenses arose under the enfranchisement agreement, or otherwise under any provision in that behalf applicable of the Copyhold Act, 1894.

20. The date at which a voluntary enfranchisement under this act shall take effect, and the commencement of a rentcharge in consideration of a voluntary enfranchisement under this act, may be fixed by the memorandum of confirmation of the enfranchisement deed; and if not so fixed, shall be the date of the confirmation of the deed by the Board of Agriculture. Commencement of enfranchisement.

We have seen, that in the case of a compulsory enfranchisement the rentcharge (enfranchisement consideration) commences as from the date of the notice given to enfranchise (sect. 8, sub-sect. 1), although the enfranchisement itself takes effect as from the date of the award confirmed or otherwise from any date in that behalf

S. 21. appointed in the confirmation of the award (sect. 10, subsect. 6).

And we now see, that in the case of a voluntary enfranchisement under the act, the rentcharge (enfranchisement consideration) commences (under this section) as from the date of the deed of enfranchisement being confirmed, or otherwise from any date in that behalf appointed in the memorandum of confirmation; and that the enfranchisement itself also takes effect (under this section) as from the date as from which the rentcharge commences,—or generally as from the date of the confirmation of the deed of enfranchisement, or otherwise as from any date in that behalf appointed in the memorandum of confirmation.

PART III.—EFFECT OF ENFRANCHISEMENT.

On enfranchisement, land to become freehold.

21.—(1.) When an enfranchisement is made under this act, the following provisions shall, from and after the time when the enfranchisement takes effect, apply with respect to the land enfranchised :—

In the previous sections of the act, and in the notes annexed to such previous sections (and to the sub-sections thereof), a compulsory enfranchisement has been kept wholly apart from a voluntary enfranchisement,—sections 1 to 13 relating exclusively to compulsory enfranchisements, and sections 14 to 20 relating exclusively to voluntary enfranchisements, under the act.

But in the subsequent sections of the act,—and in the notes annexed to such subsequent sections (and to the sub-sections thereof),—what is enacted or stated generally of an enfranchisement or of an enfranchisement rentcharge is to be taken as enacted or stated of a compulsory enfranchisement and of a voluntary enfranchisement indifferently; and it will be necessary, therefore, in reading and considering the subsequent parts of this act, to distinguish between compulsory and voluntary enfranchise-

ments only in those particulars in which the act itself expressly distinguishes between them,—there being, of course, numerous matters hereafter dealt with that are expressly stated to relate to compulsory enfranchisements only, and others which are expressly stated to relate to voluntary enfranchisements only. S. 21 (1).

But under this present (21st) section, dealing with the effect of an enfranchisement,—there is no distinction between a compulsory and a voluntary enfranchisement,—the effect of each being as expressed in this sub-section and in the two following sub-sections; but it is, of course, important to observe, that the sub-sections are dealing only with enfranchisements “*under the act*,” and not with enfranchisements effected apart from the act, or with (*e.g.*) voluntary enfranchisements at the common law,—all which latter will, therefore, depend for their effect upon other considerations.

A compulsory enfranchisement (it will be remembered) “*takes effect*” (within the meaning of this sub-section, and, in general, for all purposes), as from the date of the award being confirmed by the board, or otherwise as from the date in that behalf appointed in the board’s confirmation of the award (sect. 10, sub-sect. 6); and a voluntary enfranchisement “*takes effect*,” as from the date of the board’s confirmation of the enfranchisement deed, or otherwise as from the date in that behalf appointed in the memorandum of confirmation (sect. 20).

- (a) The land shall be of freehold tenure;
- (b) The lord shall be entitled, in case of an escheat for want of heirs, to the same right as he would have had if the land had not been enfranchised;
- (c) The land shall not be subject to the custom of borough English, or of gavelkind, or to any other customary mode of descent, or to any custom relating to dower or freebench

S. 21 (1).

or tenancy by the curtesy, or to any other custom whatsoever, but shall be subject to the same laws relating to descents, and dower, and curtesy as are applicable to land held in free and common socage :

By the effect of the enfranchisement,—and as from the date at which the enfranchisement “*takes effect*,”—

- (1.) The land becomes of freehold tenure: that is to say, it becomes of free and common socage, with all the incidents which (whether by the common law or by statute) are or have been annexed to lands of that tenure.

But whereas, on the sale of lands described as freehold lands *simpliciter*, it would be a defect in the title shown thereto if the mines were not included, or if there were any restrictive covenants and conditions affecting the user of the lands,—the true signification of freehold extending to include not only the surface, but also everything above it and beneath it,—*usque ad coelum, et deinde usque in inferos*,—and the expression freehold connoting, in general, freedom of user in all respects (subject only to the maxim *sic utero tuo, ut alienum non laedas*),—on a sale of enfranchised copyholds (being copyholds which are only freeholds by force of this act, or of the earlier Copyhold Acts), it is necessary to describe them (in the particulars) as having been formerly copyhold but now enfranchised; and thereupon, and either by force of some general conditions of sale, or else by a special condition of sale framed to meet the particular case, the vendor is protected against any requisition or objection which the purchaser might otherwise have made upon or to the title as abstracted,—the conditions (whether general or special), coupled with the description in the particulars,

bringing fully to the purchaser's knowledge what he may expect,—so that he cannot say that he is left without (or that he is disappointed of) anything he supposed he was buying, and the vendor is therefore also thereby shielded against loss. S. 21 (1).

- (2.) But the enfranchised tenement continues to be held of the enfranchising lord,—who, therefore, retains the right of escheat *per defectum sanguinis*; and to put this matter beyond doubt (the matter having been considered doubtful upon the earlier Copyhold Acts, except only in the case of a commutation where the lord's escheat was expressly preserved)(*n*), it was provided, by sect. 4 of the Copyhold Act, 1887, and the provision is maintained under this present sub-section of sect. 21 (but, of course, only as regards enfranchisements *under the act*), that the lord shall be entitled, in case of an escheat for want of heirs, to the same right as he would have had if the land had not been enfranchised. And, as regards the present law of escheats, it may be briefly stated as follows: Freehold lands (and also copyhold lands) escheat for want of heirs only; when the legal estate and the equitable estate are severed, there is no escheat while the equitable ownership continues in anyone; but when the equitable ownership would (if combined with the legal ownership) have escheated, then the mere fact that the bare legal ownership continues in some one (*scil.*, in the trustee or trustees) will not (in the case of deaths after the 14th August, 1884) prevent the escheat(*o*).

- (3.) The enfranchised tenement is forthwith discharged of all customs of descent,—whether the custom of

(*n*) Copyhold Act, 1841, s. 82.

(*o*) Intestates' Estates Act, 1884, 47 & 48 Vict. c. 71, overruling *Burgess v. Wheate*, 1 Eden, 177; and see *Sperling v. Rochfort*, 16 Ch. D. 18; *Gallard v. Hawkins*, 27 Ch. D. 298.

S. 21 (1).

descent applicable to it (before the enfranchisement) was the custom of gavelkind, or the custom of borough-english, or in fact any other custom of descent; and the tenement is subjected to the same canons of descent (whether by the common law or by force of any statute) to which ordinary free and common socage lands are subject. Also, the enfranchised tenement is forthwith discharged of any custom relative to the widow's dower (otherwise called her *freebench*); and of any custom relative to the husband's curtesy estate; and the tenement is subjected to the same rules to which (by the common law, as modified by divers statutes) ordinary free and common socage lands are subject, so far as regards dower and curtesy estates, that is to say, widows will now have one-third only of the enfranchised tenement but for their whole lives, whether they marry again or not, or remain (or do not remain) spotless or chaste,—and will be liable to lose their dower altogether by their husbands' alienations, whether *inter vivos* or by will, or to lose it *pro tanto* by their husband's mortgages and charges; and husbands surviving their wives (provided they have had inheritable issue by the predeceasing proprietrix and have otherwise qualified by the common law) will now have the whole of the enfranchised tenement and for their whole life, but will be liable to lose their curtesy altogether by their wives' alienations, whether *inter vivos* or by will (being valid alienations), or to lose it *pro tanto* by their wives' mortgages and charges (being valid mortgages and charges).

- (4.) The enfranchised tenement is forthwith discharged of all (if any) other customs whatsoever, which would (if they continued applicable to the tenement) place it on a different footing from ordinary free and common socage lands; and in lieu of such customs, the enfranchised tenement is subjected to

the analogous or corresponding rules (if any) of the common law which were and are applicable to lands of free and common socage tenure; so that, *e.g.*, the old right of common by custom annexed to the copyhold tenement before its enfranchisement is (by force of this sub-section) discharged and extinguished; for such right existed only by custom, and "every custom whatsoever" is, by force of this sub-section, discharged,—wherefore, by the express provisions of sect. 22 of this act, such right of common is preserved, and is thereby constituted a statutory (having ceased to be a customary) right.

S. 21 (1).

Provided as follows:—

- (i.) Nothing in this section shall affect the custom of gavelkind in the county of Kent.

But, of course, the custom of gavelkind referred to in this sub-section is the special custom (prevailing within certain manors, and within some few manors only) applicable to the copyhold hereditaments held of such manors; and it is that special custom only that is extinguished by the enfranchisement; and the so-called custom of gavelkind in Kent (which is, in fact, the common law of Kent) is not intended by,—nor is it affected by anything in,—this act.

- (ii.) Nothing in this section contained with respect to dower, freebench, or curtesy shall apply to any person married before the date at which the enfranchisement takes effect.

And the alteration effected by (or consequent upon) the enfranchisement is not, so far as regards dower (or freebench) and curtesy, to affect husbands and wives married before the enfranchisement "*takes effect*,"—voluntary enfranchisements (as we have seen) taking effect as from

S. 21 (1). the date of the confirmation, by the Board of Agriculture, of the enfranchisement deed or otherwise as from the date in that behalf appointed in the memorandum of confirmation (sect. 20) ; and compulsory enfranchisements (as we have seen) taking effect as from the date of the award confirmed, or otherwise as from the date in that behalf appointed in the confirmation of the award (sect. 10, subsect. 6). And, therefore, as regards all such husbands and wives who shall have married prior to the enfranchisement taking effect, the tenement, although enfranchised, will continue (so far as regards dower or freebench, and so far as regards the curtesy estate) to be subject to, and governed by, the special customs of the manor in that behalf relevant and applicable.

- (d) The land shall be held under the same title as that under which it was held at the date at which the enfranchisement takes effect, and shall not be subject to any estate, right, charge, or interest affecting the manor ;
- (e) Every mortgage of the copyhold estate in the land shall become a mortgage of the freehold for a corresponding estate, but subject to any charge having priority thereof by virtue of this act.

The title to the enfranchised freehold is the title of the old copyhold or ancient freehold tenement,—that is to say, it is not the title under and according to which the lord is entitled to the manor,—for if it were so, then the title would be subject to and affected by (but this subclause expressly enacts that it shall not be subject to or affected by) any estate, right, charge, or interest affecting the lord's title or the manor.

But the old title to the tenement remains,—and therefore, in the case of enfranchised copyholds, every mortgage on the old copyhold estate becomes a mortgage on the

enfranchised tenement,—for the like estate; that is to say, if the mortgage was in customary fee simple, it will now be a mortgage in fee simple: and if it was equitable on the copyhold (or for a term of years therein), so it will be equitable on the enfranchised tenement (or for a corresponding term of years therein); and every such mortgage will retain its old priority, as being first, second, third, or other subsequent mortgage,—save and except when and to the extent that the act itself gives priority (as it in general does) to every enfranchisement charge created under the act. S. 21 (2).

And similarly, in the case of an ancient freehold which is enfranchised (including what the act describes as a customary freehold), the old title attaches (or continues to attach) to the enfranchised tenement,—with all the like consequences, namely:—the enfranchised tenement remains unaffected by the lord's title, or by any estate, right, charge, or interest affecting the manor; and is (or becomes or continues) subject to only the mortgages and charges to which it was subject before the enfranchisement,—and all these charges retain their old quality and also their old priorities *inter se*,—being, however, postponed to any enfranchisement charge to which the act itself expressly assigns a priority over such other (already subsisting) mortgages and charges.

(2.) An enfranchisement shall not, except as in this act mentioned, affect the rights or interests of any person in the land enfranchised under a will, settlement, mortgage, or otherwise; but those rights and interests shall continue to attach upon the land enfranchised, in the same way as nearly as may be as if the freehold had been comprised in the instrument or disposition under which that person claims.

All which provisions (general and specific) are expressly enacted by this sub-section,—but merely, *pro majori*

S. 21 (3). *cautelâ*, and in order to prevent the possibility of any questions arising; that is to say, estates in possession and in remainder, and other estates subsisting before the enfranchisement, in the enfranchised tenement continue to subsist in the tenement after the enfranchisement thereof, equally as if the tenement had been first enfranchised and then settled, instead of having been first settled and then enfranchised,—and that is so, whether the settlement is under a deed or under a will.

And accordingly, all the persons beneficially entitled or entitled by way of mortgage or otherwise in the unenfranchised tenement remain and continue entitled for the like beneficial estates and interests in the enfranchised tenement, or (as the case may be) for the like mortgagee's interest or other interest in the enfranchised tenement, as they had in the unenfranchised tenement.

(3.) Where land is, at the date at which the enfranchisement thereof under this act takes effect, subject to any subsisting lease or demise, the freehold into which the copyhold estate is converted shall be the reversion immediately expectant on the lease or demise; and the rents and services reserved and made payable on, and the conditions in, or in respect of, the lease or demise, shall be incident and annexed to the reversion; and the covenants or agreements, expressed or implied, on the part of the lessor and lessee respectively shall run with the land and with the reversion respectively; and the enfranchisement shall not affect any right of distress, entry, or action accruing in respect of the lease or demise.

And in particular, when the tenement, immediately prior to the date of the enfranchisement taking effect,

was subject to any lease,—so that the enfranchising tenant was (in effect) entitled to the legal reversion on such lease,—the lease becomes a lease of the enfranchised tenement, equally as if the enfranchisement had been first made and then afterwards the lease had been made. S. 22.

So that (as regards copyholds enfranchised, and, *semble*, as regards also ancient freeholds enfranchised), the rent incident to the old reversion shall become incident to the new reversion, and all the covenants and conditions which on the lessee's part are of a nature to run with the land, and on the lessor's part are of a nature to run with the reversion (while the tenement remained unenfranchised) continue to run after the enfranchisement,—and all rights of distress, and of entry or action, are unaffected by the enfranchisement,—

Which provisions in the case of enfranchised copyholds were necessary (*p*), and therefore are expressly enacted by this sub-section; but in the case of ancient freeholds, would hold good without being (and accordingly they are not) expressly enacted by this sub-section.

22. An enfranchisement under this act shall not deprive a tenant of any commonable right to which he is entitled in respect of the land enfranchised; but where any such right exists in respect of any land at the date of the enfranchisement thereof, it shall continue attached to the land notwithstanding the land has become freehold. Exception for rights of common.

The effect of the enfranchisement being what it is stated to be in the notes to sect. 21,—and it being a principal part of that effect to discharge the enfranchised tenement of every *custom* whatsoever,—a right of common over the lord's waste, which right (when it exists in respect of a

(*p*) *Richards v. Harper*, L. R. 1 Exch. 199.

S. 23. copyhold tenement) exists by custom only, would (but for this present section) have been destroyed by the enfranchisement; and so it is expressly preserved; and now it will be claimed by virtue of this act, and no longer by virtue of the custom.

A right of common over waste lands (other than the waste of the particular manor) would, *semble*, not have been destroyed by the enfranchisement—such right (when it exists) being a right annexed to the lands by prescription (or otherwise by some title distinct from and independent of custom) (*q*): and a right of common annexed to ancient freehold lands would also, *semble*, have remained after the enfranchisement. But this section saves all these questions from arising, by the general terms in which it provides for the continuance of the right of common in every case, notwithstanding the enfranchisement.

Exception
for mines
and other
rights.

23.—(1.) An enfranchisement under this act shall not, without the express consent in writing of the lord or tenant respectively, affect the estate or right of the lord or tenant, in or to any mines, minerals, limestone, lime, clay, stone, gravel, pits, or quarries, whether in or under the land enfranchised or not; or any right of entry, right of way and search, or other easement of the lord or tenant, in or through over or under any land, or any powers which in respect of property in the soil might but for the enfranchisement have been exercised,—for the purpose of enabling the lord or tenant, their or his agents, workmen, or assigns, more effectually to

(*q*) *Marshall v. Hunter*, Cro. Jac. 153; *Grymes v. Peacock*, 1 Buls. 19; also, *Scriven on Copyholds*, 7th ed. (1896), by Brown, pp. 332, 376.

search for, win, and work any mines, minerals, pits, or quarries, or to remove and carry away any minerals, limestone, lime, stones, clay, gravel, or other substances had or gotten therefrom; or the rights, franchises, royalties, or privileges of the lord, in respect of any fairs, markets, rights of chase or warren, piscaries, or other rights of hunting, shooting, fishing, fowling, or otherwise taking game, fish, or fowl. S. 23 (1).

Sub-sect. 1 of this section corresponds with the 48th section of the Copyhold Act, 1852,—which was so much referred to in enfranchisements under the earlier Copyhold Acts: and the effect of this sub-section is the same (in every particular) as the old 48th section, that is to say:—In the general case,—and unless the matters excepted or reserved by this sub-section are (by consent of lord and tenant) expressly comprised in the enfranchisement,—the enfranchisement (whether of copyhold or of ancient freehold lands) leaves the mines and minerals and mining rights exactly where they were, and exactly according to the title thereto which existed immediately prior to the enfranchisement taking effect, that is to say:—in the lord (if and so far as he was then entitled thereto) or in the tenant (if and so far as he was then entitled thereto).

And the sub-section leaves also unaffected, in the general case,—that is to say, unless by express agreement between the lord and the tenant the enfranchisement is especially extended to include,—the lord's franchises (such as fairs or markets, and ferries; shooting rights and the like; and rights of chase or warren).

Of course, the express agreement to include these excepted and reserved rights may extend to including only some of them, without including all of them: but so far as they are not included in the enfranchisement, they cannot afterwards be included (if the tenant should

S. 23 (1). desire to include them) in some new notice requiring enfranchisement; and so far, therefore, as they are not included in the first enfranchisement, they can afterwards be acquired by the tenant (or as the case may be, by the lord even), only by means of some voluntary purchase thereof by the tenant from the lord, or (as the case may be) by the lord from the tenant: and these observations apply as well to the mines and minerals and mining rights as also to the lord's franchises.

Provided that the owner of the land so enfranchised shall, notwithstanding any reservation of mines or minerals in this act or in the instrument of enfranchisement, but without prejudice to the rights to any mines or minerals, or the right to work or carry away the same, have full power to disturb or remove the soil so far as is necessary or convenient for the purpose of making roads or drains or erecting buildings or obtaining water on the land.

And inasmuch as the tenant seldom cares to have included in the enfranchisement the rights reserved by this 23rd section,—save, possibly, the surface sand and gravel, and stone, lime or clay,—therefore, and with a view to (and in aid of) those building improvements which it is in the general case, the very object of the enfranchisement to obtain facilities for making, this proviso enacts, that the enfranchising tenant shall (without acquiring the reserved rights or any of them) have full power to “*disturb or remove the soil*” for the purposes hereinafter specified, or for any of such purposes,—and that, notwithstanding any reservation of mines and minerals made by the act (or which may be contained in the enfranchisement award or enfranchisement deed), but always without prejudice to the existing rights (whether of lords or tenants) to or in respect of the working and carrying away of the mines and minerals.

This right to "*disturb or remove the soil*" extends, of course, to disturbing or removing the sand or gravel, or the stone, lime, or clay,—wherever these are (as usually they are) portions of the "*soil*"; but the right to "*disturb and remove*" does not extend to anything beyond the mere disturbing and removal; *e.g.*, it does not extend to authorize the tenant to "*use*" the sand or gravel, or the stone, lime, or clay for the specified purposes, or for any of them; that is to say, he cannot use the dislocated materials for making or ballasting roads, or for constructing buildings or the concrete foundations thereof, or for constructing drains or sewers, or for constructing aqueducts or wells. But he may disturb and remove the soil, "so far as is *necessary or convenient*," for the purpose of sinking a well on the enfranchised tenement, or leading water by aqueduct constructed thereon, or collecting water in a reservoir dug therein; or for the purpose of constructing a drain or sewer; or for the purpose of getting at a good foundation for any building to be erected; or for the purpose of making a road in a proper or convenient direction, and with proper or convenient levels,—building his well or aqueduct, or reservoir, or his drain or sewer, or his house, with materials acquired, by purchase or otherwise, elsewhere; or else, (but only by special agreement with the lord in that behalf first entered into) with the materials dislocated from the enfranchised tenement.

(2.) A steward shall not, without special authority, have power to consent on behalf of a lord under this section.

For all the purposes of the proceedings in an enfranchisement under the act,—save only the purpose in this sub-section specified,—the steward is (and acts as) the lord's agent (sect. 47), unless and until the lord has given to the tenant (and also to the Board of Agriculture) a notice in writing to the effect that the lord will act as his own agent, or that the person in that behalf specified in the notice has been appointed as his agent in the matter.

S. 24.

But by this present sub-section, the steward, as such, is not competent,—but must have a special authority from the lord enabling him,—to enter into, on the lord's behalf, the agreement by this section appointed, where the mines, or minerals, or mining rights, or the lord's franchises, are to be affected by the enfranchisement.

Power for
tenant to
grant ease-
ments to
lord.

24.—(1.) On an enfranchisement under this act, there may be reserved or granted with the consent of the tenant, to the lord any right of way or other easement in the land enfranchised for more effectually winning and carrying away any mines or minerals under the land.

Usually, the mines and minerals within or under the copyhold belong to the lord before the enfranchisement,—and will (unless included expressly in the enfranchisement award or enfranchisement deed) continue to belong to the lord after the enfranchisement,—subject only (when subject) to any limited mining rights of the tenant; and the law is the same with those copyholds which are sometimes (and usually) called customary freeholds; but in the case of ancient freeholds, it is otherwise.

Now, if the enfranchising tenant (whether in the case of copyholds proper, or of customary freeholds) is willing that the lord should have any mining privileges (whether rights of way or other rights) in or over the tenement after its enfranchisement,—beyond and in excess of the mining rights which he (the lord) may already have as lord,—these other or more extensive mining rights may be granted or reserved to the lord—and as well in the case of a compulsory enfranchisement as also in the case of a voluntary enfranchisement.

(2.) The easement must be reserved by the award or granted in the deed of enfranchisement.

The other and more extensive mining rights which, by the first sub-section of this section, are authorised to be

granted or reserved to the lord upon an enfranchisement, are by this sub-section directed—

S. 25.

- (1) In the case of a compulsory enfranchisement, to be reserved to the lord, in and by the enfranchisement award; and
- (2) In the case of a voluntary enfranchisement, to be granted by the tenant to the lord, in and by the enfranchisement deed.

And the mode of grant or of reservation so prescribed is the only mode in or by which such other or more extensive mining rights can, upon and in connection with an enfranchisement, be acquired by the lord: but, of course, at any time after (or before) the enfranchisement, the lord may acquire such other and more extensive mining rights, by treaty,—and independently of any enfranchisement proceedings,—but the treaty must be entered into between lords and tenants who are respectively able to contract, that is to say, either by virtue of their respective estates, or in the exercise of any relevant powers incident to their estates.

PART IV.—PROVISIONS AS TO CONSIDERATION MONEY, EXPENSES, RENTCHARGES.

Consideration Money.

25. The receipt of any person for any money, paid to him in pursuance of this act, shall be a sufficient discharge for the money; and the person paying it shall not be bound to see to the application or be liable for the misapplication or loss thereof.

Power
to give
receipts.

The money here referred to may be, either (1) the enfranchisement consideration when payable in a lump sum; or (2) any instalment of the enfranchisement rentcharge when the enfranchisement consideration has taken that form; or (3) any money whatsoever, which, whether

S. 26. on account of the expenses of the enfranchisement proceedings or otherwise, is payable under the act.

And any such money may be paid, by the party liable to make the payment, to the person who (in pursuance of the act) is entitled to receive it; and the receipt of the party so receiving it is a full discharge (to the party paying it) for the money therein expressed to have been received; and the payer need not see to the application, and will not (in the absence, of course, of fraud) be liable for any misapplication, of the money so paid.

But it is to be particularly observed, that the receipt which is to discharge the payer under this section is the receipt of a person who (by the provisions of the act) is entitled to receive the money; and it is the receipt of that person only that is here referred to,—the act (by sect. 26, sub-sect. 4) making it clear that payment to the wrong party is no payment at all.

Payment
of enfran-
chisement
money.

26.—(1.) Money payable under this act as the compensation or consideration for an enfranchisement may, subject to the other provisions of this act, be paid to the lord for the time being.

The lord for the time being may, in the general case, receive (and therefore give a receipt for) the enfranchisement consideration, when that is either a lump sum of money or is a rentcharge.

But this general rule is applicable only when the act does not otherwise specifically provide; and there are many specific provisions of the act, relative to the payment of (and the receipt to be given for) the enfranchisement consideration being money. And the general rule is applicable only when the lord is either fee simple owner of the manor, or has an express power to sell or to enfranchise and to give receipts for the sale moneys or enfranchisement moneys,—as will more fully appear from the provisions of this present section and the notes annexed thereto.

Provided that where any money is payable in pursuance of this section to a lord having only a limited estate or interest in the manor, the Board of Agriculture— S. 26 (1).

- (a) if the money exceeds the sum of twenty pounds for all the enfranchisements in the manor, shall direct it to be paid into court or to trustees in manner provided by this act; and
- (b) if the money does not exceed the sum of twenty pounds for all the enfranchisements in the manor, may direct it either to be paid in manner aforesaid, or to be retained by the lord for his own use, as in their discretion they think fit.

And, firstly, when the lord is only entitled to a life estate (or to some other limited estate or interest) in the manor, he is not, as a general rule, to receive the money payable by the tenant for the enfranchisement.

But instead of being paid to the lord, the money (i.e., the enfranchisement consideration when payable as a lump sum) is to be paid as follows:—

- (1) When the sum total of the enfranchisement moneys (*scil.*, the sum total of the compensation payable by any particular tenant for all the tenements comprised in the enfranchisement to him) exceeds 20*l.*,—the lump sum, unless paid into court, is to be paid to certain trustees appointed by the board to receive it; but it may (and, if so directed by the board, it must) be paid into court, and in that case it is to be paid into the Chancery Division of the High Court of Justice, to the credit of an account intituled “*Ex parte, the Board of Agriculture*” (sect. 32, sub-sect. 1), adding “The manor of in the county of .” (Funds Rules, 1894, r. 40.)

s. 26 (2).

And where, under the provisions of the act, the enfranchisement money may be either paid to such trustees as aforesaid or into court to the credit aforesaid, then the lord for the time being has the option of directing which mode of payment shall be adopted (sect. 32, sub-sect. 3); and

- (2) When the sum total of the enfranchisement moneys aforesaid does not exceed 20*l.*, then the lump sum is either to be paid (under the direction of the board) to such trustees as aforesaid or into court to the credit aforesaid; or (if the direction of the board should so provide,—the board having in this particular an absolute discretion), it may be retained by the lord for his own use.

(2.) If a lord refuses to accept any money payable to him under this section, the money shall be paid into court or to trustees in manner provided by this act.

The money referred to in this sub-section is either the enfranchisement consideration (*not exceeding 20*l.**) referred to in the proviso to sub-sect. 1 (which a limited owner may, in the discretion of the board, be directed by the board to retain for his own use),—and that money such limited lord is not likely to refuse to accept (although, of course, he may refuse to accept it); or it is the lump sum (of considerably larger amount) which a lord (who is fee simple owner of the manor or the like) may, under the act, receive and give a receipt for.

Why the lord should refuse to accept such 20*l.* or such larger lump sum,—it is difficult to imagine,—especially as, under this sub-section, the only effect of his refusal is to send the money into court to the account of the board or else to pay it to trustees appointed by the board to receive it; after which, the enfranchisement proceedings will pursue their usual course, and the enfranchisement

be duly completed,—the lord's refusal to accept the money not operating in any way to stay such proceedings or to defer the completion of the enfranchisement.

S. 26

(3) (4).

(3.) If any money in respect of the compensation or consideration for an enfranchisement is paid to a lord whose title afterwards proves to be bad or insufficient, the rightful owner of the manor, or his representative, may recover the amount from the person to whom it was paid, or his representative, with interest at the rate of five pounds per cent. per annum from the time of the title proving to be bad or insufficient.

When the lord for the time being has received the enfranchisement consideration aforesaid,—the same having been paid to him in due pursuance of the provisions in that behalf contained in the Act,—and subsequently to his receipt thereof he is evicted in an action of ejectment or action to recover possession of the manor (or his title as lord is otherwise proved to be bad or insufficient), then the successful plaintiff in the ejectment action (or other the rightful owner of the manor),—or (in case of his death) his legal personal representative,—is entitled (subject, of course, to any statute of limitations that may be applicable to the case), to recover from the lord who has received the money or (in case of his death) from his legal personal representative the amount so received with interest thereon at the rate of 5 per cent. per annum,—which interest is to be computed from the date of the judgment in the ejectment action (or otherwise from the date of the receiving lord's title to the manor being proved bad or insufficient).

(4.) If any principal money is paid for enfranchisement to a person who is not entitled to receive it under the provisions of this act, the

S. 26 (5). land enfranchised shall continue to be charged with the payment of the money in favour of the person entitled :

Provided that the person entitled to the land may recover the money as against the person who wrongfully received it.

When the enfranchisement consideration (being a lump sum, and whether exceeding 20*l.* or not exceeding 20*l.*) is paid by the tenant,—under some mistake on his part, to a person (*e.g.*, a lord) who, under the provisions of the act, is not entitled to receive it,—or to give a receipt for it,—the payment is of course no payment, and the receipt given for it is, of course, no discharge for the enfranchisement consideration payable. And under this sub-section, the enfranchised tenement is declared (and made) liable for the enfranchisement consideration as for a continuing liability,—that is to say, is charged with the enfranchisement consideration, exactly as if the tenant instead of paying it had (under sect. 36, sub-sect. 1) expressly charged the enfranchised tenement therewith; but the enfranchising tenant is not personally liable to pay the enfranchisement consideration over again; but the person (*e.g.*, the lord) who, under the provisions of the act, was (and is) entitled to receive the enfranchisement consideration, may recover it from the party who wrongfully received it, and the latter is personally liable therefor.

(5.) If any dispute arises as to the proper application, appropriation, or investment under this act of any money payable in respect of an enfranchisement, the Board of Agriculture may decide the question, and their decision shall be final.

The board, besides having control of the mode of payment of the enfranchisement consideration (when the

enfranchising lord is not the fee simple owner of the manor), has also (under this sub-section) control of the mode of application of the money so paid, and of the investment of such money, and of its appropriation,—and the decision of the board as regards such application, investment, or appropriation is final; but the board is not compelled to interfere in the matter; and (unless when there is some dispute) the board will not interfere.

S. 27.

Rentcharges.

27. The following provisions shall apply to every rentcharge created under the provisions of this act :—

Payment
of rent-
charges
under act.

- (a) The rentcharge shall be payable half-yearly, on the first day of January and the first day of July in every year :
- (b) The first payment of a rentcharge shall be made on such one of those half-yearly days of payment as next follows the day fixed for the commencement of the rentcharge,—or if no such day is fixed, the date of the award or deed of enfranchisement,—and shall be of an amount proportional to the interval between the commencement of the rentcharge and the said day of payment :

Under section 8, sub-section 1, as regards compulsory enfranchisements, the rentcharge (when the enfranchisement consideration assumes that form) commences as from the date of the notice to enfranchise. And under section 20, as regards voluntary enfranchisements, the rentcharge (when the enfranchisement consideration assumes that form) commences as from the date of the enfranchisement deed being confirmed by the board, or

S. 27 (b). otherwise as from the date in that behalf specified in the memorandum of confirmation of such enfranchisement deed. And as regards the other rentcharges which are provided for by the act, the date of the commencement thereof will be in some manner fixed and ascertained. And thereupon, and as regards all rentcharges under the act, the payment thereof will be as follows :—

First, in respect of the period intervening between the date (in whatever manner ascertained or fixed) of the commencement of the rentcharge and the 1st January, or (as the case may be) the 1st July, which first follows thereafter, a due proportionate part of such rentcharge is to be paid on the first of such half-yearly days arriving : and

Secondly, one equal half part of the rentcharge will be payable thereafter half-yearly on every 1st July and 1st January, or (as the case may be) 1st January and 1st July, thereafter.

The various rentcharges which may be created under the provisions of the act are as follows :—

- (1) The enfranchisement consideration rentcharge in favour of the lord on a compulsory enfranchisement (sect. 8),—and which is created or reserved by the enfranchisement award (sect. 10, sub-sect. 2):
- (2) The enfranchisement consideration rentcharge in favour of the lord on a voluntary enfranchisement (sect. 15),—and which is created by deed of grant (sect. 17, sub-sect. 3): and
- (3) The terminable rentcharges which may be created under sub-sect. 5 of sect. 35 by way of securing payment (or repayment) of the principal sums following (together with the expenses of the charge), that is to say :—
 - (a) The principal sum remaining unpaid owing to the lord on account of the enfranchisement consideration (being a gross or lump sum), and which the lord has consented to leave owing on mortgage of the enfranchised tenement.

—the enfranchising tenant executing to the lord this charge (sect. 36, sub-sect. 1): S. 27 (c).

- (b) The principal sum representing the aggregate of the two principal amounts following, that is to say, firstly, the principal amount paid by the enfranchising tenant for the enfranchisement consideration; and secondly, the principal amount representing the total of all the expenses incurred by the enfranchising tenant of and incidental to the enfranchisement proceeding,—the enfranchising tenant creating this charge in favour of himself on the enfranchised tenement (sect. 36, sub-sect. 1):
 - (c) The principal sum which (as certified by the board) is the equivalent in value of the fee simple land conveyed (when fee simple land is conveyed) by the enfranchising tenant as the enfranchisement consideration on a voluntary enfranchisement,—the enfranchising tenant creating this charge in favour of himself on the enfranchised tenement (sect. 36, sub-sect. 2): and
 - (d) The principal sum representing the aggregate of the two principal amounts following, that is to say, firstly, the principal amount paid by the lord for the purchase of the copyhold tenement (under sect. 11); and secondly, the principal amount representing the total of all the expenses incurred by the lord of and incident to such purchase,—the lord creating this charge in favour of himself on the purchased tenement, and on the manor and on any other lands held with the manor (sect. 36, sub-sect. 3).
- (c) The rentcharge shall be a first charge on the land charged therewith, and shall have

S. 27 (d).

priority over all incumbrances affecting the land except tithe rentcharge and any charge having priority by statute, notwithstanding those incumbrances are prior in date.

Every rentcharge created under the provisions of the act (that is to say, each one of the *three* rentcharges (whether perpetual or terminable) enumerated in the notes to sub-clauses (a) and (b) of this section) is constituted a first charge on the land which purports to be charged therewith, and is given priority over all incumbrances whatsoever on such land, save only tithe rentcharge (if any) and any other (if there should be any other) charge which by statute has priority as a charge on such land,—

Just as (in the case of voluntary enfranchisements) the charge which (by sect. 19 of the act) is given to the lord upon the enfranchised tenement (*scil.*, the charge by that section given for every sum of money payable to the lord in respect of the enfranchisement) is a first charge, and with the like priority,—

But the present sub-section is general, applying to every rentcharge “*created under the provisions of the act,*” —and therefore, for whatever purpose, provided only it be a purpose authorized by the act.

- (d) The rentcharge shall be deemed to be granted to the lord and his heirs, to the uses, on the trusts, and subject to the powers and provisions subsisting, at the date of the enfranchisement in consideration of which the rentcharge arises, in respect of the manor of which the land subject to the rentcharge was held; and shall be appendant and appurtenant to the manor, but not so as to be incapable of

being severed therefrom or to be affected by s. 27 (e).
the extinction thereof:

Although sect. 27 is in its terms general,—and therefore applies to every rentcharge “created under the provisions of the act,”—still the section is mainly directed to the enfranchisement consideration where that assumes (as it in general does) the form of a rentcharge,—the immediately preceding section (sect. 26) having dealt with that consideration when it assumes the form of a lump sum of money.

And accordingly, by this sub-clause of sect. 27,—dealing only with the rentcharge for the enfranchisement consideration,—it is provided, that (in effect) the rentcharge shall be settled (when the manor is in settlement) to the same uses as the manor, *i.e.*, to the uses which were subsisting in the manor at the date of the enfranchisement; and the rentcharge is annexed to the manor, but not as an inseparable incident thereof,—for the rentcharge may be sold or otherwise dealt with, independently of the manor, and would not be extinguished by the extinction of the manor. “The date of the enfranchisement” referred to in the section must be the date as from which the enfranchisement rentcharge itself commences, which (in the case of voluntary enfranchisements) is the date in that behalf appointed by sect. 20, and (in the case of compulsory enfranchisements) is the date in that behalf appointed by sect. 10, sub-sect. 6.

- (e) The rentcharge, whenever created, shall be recoverable by the like remedies as are provided by section forty-four of the Conveyancing and Law of Property Act, 1881, in respect of rentcharges created after the commencement of that Act.

44 & 45
Vict. c. 41.

Provided that an occupying tenant, who properly

S. 27 (e). pays on account of a rentcharge any money which (as between him and his landlord) that tenant is not liable to pay, shall be entitled to recover from the landlord the money paid, or to deduct it from the next rent payable by the tenant; and an intermediate landlord, who pays or allows any sum under this provision, may in like manner recover it from his superior landlord, or deduct it from his rent.

The remedies given by the Conveyancing Act, 1881, to rentchargees in respect of and for the recovery of their rentcharges,—being rentcharges created by (or arising under) instruments which first come into operation on or after the 1st January, 1882,—are the following:—

- (1) A right of distress,—upon the land charged with the rentcharge: to recover the arrears by sale of the distress,—the costs of and incident to the distress and to the sale thereof being added to the amount of the arrears. And this right is exerciseable, so soon as the rentcharge (any half-yearly instalment thereof) is in arrear for twenty-one days. But of course, the distress by the rentchargee is subject to any prior estate, interest, or right in or to the land charged; and the distress must be conducted with all due regularity, like any ordinary distress.
- (2) A right of entry upon the land charged with the rentcharge: to recover out of and by receipt of the rents and profits of the land, the arrears due at the date of the entry,—all instalments which thereafter, and during the continuance of the rentchargee's receipt of the rents and profits upon such entry, become due, together with all the costs and expenses of and incidental to the entry and receipt, being added to the amount of the arrears due at the date of the entry. And this right is exerciseable, so soon as the rentcharge (any half-yearly instalment

thereof) is in arrear for forty days, whether legally demanded or not. But of course the entry and receipt by the rentchargee is subject to any prior estate, interest, or right in or to the land charged; and the right of entry must be exercised with all due regularity, like any ordinary right of entry. S. 27 (e).

- (3) A right to create a term of years,—in the land,—otherwise, to demise such land to any third person for a term of years,—and that either after first entering upon, or without first entering upon, the land,—upon trust to raise out of the land charged the arrears of the rentcharge and the future instalments of the rentcharge, doing so either by a mortgage or sale of the land charged (or of any part thereof) for the whole term of years or for any part thereof or else by receiving the rents and profits of the land charged, or partly by one and partly by the other of such means,—during the whole term of the demise,—the land comprised in the term being held (subject to the primary purposes thereof, that is to say, subject to the payment of the rentcharge) upon trust for the person or persons entitled to the land in reversion upon the term, so that any surplus proceeds would be payable (and any surplus rents from time to time arising would be payable) to such reversioner or reversioners,—the trustee first satisfying out of such surplus proceeds (or surplus rents) the costs and expenses of and incidental to the execution of the trusts of the indenture of demise (all costs preliminary to and including the costs of the preparation and conveyance of the said indenture being also first paid). And the land charged may, wherever that is necessary or expedient, be demised to the trustee for an estate that shall be without impeachment of waste. And this remedy is exerciseable, so soon as the rentcharge is in arrear for forty days, whether legally demanded or not. But

S. 27 (e).

of course the demise (and the trusts created thereby) would be subject to any prior estate, interest, or right in or to the land charged; and the demise (creating the trust) must be prepared and executed, and the trusts declared thereby must be executed and performed, with all due regularity, like any ordinary trust deed or trust.

And if, in pursuing any of the three remedies by this section of the Copyhold Act, 1894, made available for the recovery of the lord's enfranchisement consideration rent-charge, the lord should recover from the occupying tenant of the lands any money paid by the latter to avoid the distress,—or any other money which (as between him and his landlord) such occupying tenant is not liable to pay,—then, under the proviso annexed to this sub-section, the occupying tenant becomes entitled to the following rights, in respect of every such payment, that is to say:—

- (1) He may recover, by action against his landlord, the money so paid; or
- (2) He may deduct it from the next rent payable by him,—which next rent, being an occupation rent, will usually exceed the amount of the money paid to avoid the distress (the rentcharge being, in the general case, of much less amount than the occupation rent).

And undoubtedly, any occupation rents paid by the occupying tenant to the rentchargee who had entered, or to the trustee constituted by the indenture of demise, or under any of the trusts in and by that indenture declared, would be a full discharge to the tenant so paying the same, as against his own landlord who (but for such entry or demise) would be entitled to receive these rents, but whose right in that behalf is displaced or suspended by the entry or (as the case may be) by the demise.

And an intermediate landlord also is, by the proviso, put upon the same footing in all these particulars with the occupying tenant.

28. The persons for the time being entitled to a rentcharge under this act, and to the land subject to the rentcharge respectively, whether in possession or in remainder or reversion expectant on an estate for a term of years, may apportion the rentcharge between the several parts of the land charged therewith.

S. 28.

Appor-
tionment
of rent-
charge.

Provided as follows :—

- (a) Where the person entitled to the land is not absolutely entitled thereto, the apportionment shall not be made without the consent of the Board of Agriculture : and
- (b) A person entitled to an undivided share in a rentcharge or land shall not exercise the powers of this section, unless the persons entitled to the other undivided shares concur in the apportionment.

A rentcharge of (say) 11*l.* on a tenement containing (say) 3 acres may, under this section, be apportioned so as to make, *e.g.*, a rentcharge of 3*l.* 13*s.* 4*d.* only on each separate acre ; or so as to make, *e.g.*, a rentcharge of 4*l.* on one acre, and a rentcharge of 3*l.* 10*s.* on each of the other two acres ; or so as to make any other apportionment of the rentcharge that the parties may agree upon, —a legal deed of apportionment being, of course, prepared and executed between the parties.

And for this purpose, it is provided, that the parties to the apportionment (that is to say, the rentchargee and the landowner) must be respectively entitled for an estate in actual possession,—the rentchargee in the rentcharge, and the landowner in the land subject thereto ; or if not entitled in actual possession, must be entitled respectively to the rentcharge and land subject only to some prior term of years in the rentcharge or land, that is to say,

S. 29.

where they are respectively entitled in remainder or reversion, their remainders and reversions must respectively be expectant only on a term of years, whether in the rentcharge or in the land charged.

For it is to be known, that a rentcharge is a hereditament, and that estates may be created therein equally as in any corporeal hereditament; and it is the freehold owner,—in the case of the rentcharge, equally as in the case of the land charged,—that is to be the party to the apportionment.

But inasmuch as a rentcharge may (equally with land) be held *pro indiviso* (i.e., in undivided shares, as by tenants in common or other co-tenants), therefore the section enacts, that the aggregate co-tenants of the freehold, and not some or one of them (short of all of them), shall be the apportioning party.

And further, that wherever the apportioning party (whether solely entitled or entitled *pro indiviso*) is entitled only for a limited estate, e.g., for his own life only,—then, whether he be the owner of the rentcharge or be the owner of the land charged, the apportionment (in order to be legally effective) must receive the sanction of the Board of Agriculture.

Protection
of lessees
from
liability
to rent-
charge.

29. A sub-lessee under a sub-lease shall not, as between him and his lessor, be liable, in consequence of the creation or apportionment of a rentcharge under this act, to pay any greater sum of money than he would have been liable to pay if the charge or apportionment had not been made.

A lease (in this section referred to as a sub-lease) may have been created in the copyhold tenement prior to the enfranchisement thereof; and such lease (or sub-lease) may be subsisting at the date of the enfranchisement taking effect; and if so, it will, by force of sect. 21, sub-sect. 3, of the act, subsist in the enfranchised tenement after the enfranchisement thereof.

And by this section of the act, it is declared, that such lessee (or sub-lessee) shall not,—towards his landlord the enfranchising copyholder,—become liable to pay the enfranchisement rentcharge, or the apportioned part thereof,—further than he was liable therefor before the enfranchisement,—i.e., not at all.

S. 30.

And as regards the other rentcharges created under the act,—a lessee (or sub-lessee) of the land charged therewith will not, towards his landlord,—become liable for the rentcharge, or for any apportioned part thereof,—either at all or (as the case may be) beyond what his lease (or sub-lease) has bound him to pay; and the lease (or sub-lease) may not bind him to pay the rentcharge at all,—or may bind him to pay only some specified part thereof, in which latter case the subsequent legal apportionment will not increase his liability.

In other words, the rentcharge (whether it be an enfranchisement rentcharge or any other rentcharge under the act) is a matter as regards which the lessee (or sub-lessee) stands wholly apart from the principal parties to the transaction,—whether that transaction is the original creation of the rentcharge or is the legal apportionment of an already subsisting rentcharge.

And in case such lessee (or sub-lessee) should, under the exigency of any of the three remedies by sect. 27, sub-clause (e), given to the rentchargee, have paid any money on account of the rentcharge (or of the costs and expenses of the proceedings for the recovery thereof) which, as between him and his landlord, the lessee (or sub-lessee) was not liable to pay, then he has the right of action and also the right of set-off which in that case are given him by the proviso to sect. 27.

30.—(1.) A rentcharge created under this act may be redeemed, on any half-yearly day of payment, by the person for the time being in actual possession (or in receipt of the rents and profits)

Redemption of rent-charge.

S. 30 (1) of the land subject to the rentcharge, on payment to the person for the time being entitled to receive the rentcharge of the consideration provided by this section.

On six months' notice to redeem a mortgage, the amount to be paid on the actual redemption would be the principal money and the interest up to the day in that behalf appointed for the redemption, together with the mortgagee's costs and charges properly incurred.

And similarly, under this section, the owner of the land charged, if he desire to redeem the rentcharge, must give six months' notice in writing of his intention in that behalf; and the notice must (by this sub-section) expire with some 1st January or 1st July; and punctually on the day appointed for the redemption, the redeeming party must come with his redemption money.

The redeeming party is the landowner in possession or in receipt of the rents and profits of the land,—whether for a fee simple estate, or in fact for any other estate. And the person to be redeemed is the rentchargee in possession of or entitled to receive the rentcharge,—whether for a fee simple estate, or in fact for any other estate.

Provided that, where the person entitled to the rentcharge is entitled for a limited estate or interest only, the Board of Agriculture—

- (a) if the money exceeds the sum of twenty pounds for all the rentcharges under this act in the manor, shall direct it to be paid into court or to trustees in manner provided by this Act; and
- (b) in any other case, may direct it either to be

paid in manner aforesaid or to be retained by that person for his own use.

S. 30
(2) (3).

But where the rentchargee is entitled to the rentcharge for only a limited estate or interest therein (*e.g.*, for his own life only),—then if the aggregate amount of all the redemption moneys which at the time are payable by the redeeming party (*scil.*, in respect of lands within the one particular manor) exceeds the sum of 20*l.*, it is (by direction of the board) to be either paid into court or else paid to certain trustees in that behalf appointed by the board; but if it is only 20*l.* or less, it may (if the board so direct) be retained by the rentchargee for his own use, and otherwise it is to be paid as it would be paid if it exceeded 20*l.*

(2.) The consideration for the redemption of a rentcharge under this section shall,—

- (a) where the rentcharge is of fixed amount, be twenty-five times the yearly amount of the rentcharge; and
- (b) in any other case, be a sum to be fixed by the Board of Agriculture on the request of the person entitled to redeem the rentcharge.

The redemption value of the rentcharge is, in general, twenty-five times the yearly amount thereof; but where the yearly amount of the rentcharge is not fixed, but is (as it may be) variable (sect. 17, sub-sects. 1 and 2),—then the redemption value of the rentcharge is the sum which, on the application of the redeeming party, shall have been in that behalf fixed and certified by the Board of Agriculture.

(3.) The person intending to redeem shall give to the person for the time being entitled to receive the rentcharge six months' previous notice in writing of his intention.

S. 30 (4).44 & 45
Vict. c. 41.

(4.) If on the expiration of the notice the redemption money and all arrears of the rentcharge are not paid, the person for the time being entitled to receive the rentcharge shall have,—for the recovery of the redemption money and all arrears, if any, of the rentcharge,—the like powers in respect of the land charged as are given by the Conveyancing and Law of Property Act, 1881, to a mortgagee in respect of the mortgaged property, for the recovery of the mortgage debt and interest in a case where the mortgage is by deed.

The six months' notice having been duly given,—and the day for redemption specified in that notice having arrived,—the redeeming party must come provided (punctually on that day) with the amount of the redemption value as so fixed or ascertained as aforesaid,—together with the half-year's instalment of the rentcharge falling due on that day, and any (if there should be any) previous arrears of the rentcharge remaining unpaid; and together with the rentchargee's costs and charges properly incurred, of and incident to the redemption; and if the redeeming party does not (punctually to the day) come provided with that amount (and with the amount of these incidental payments), then (under sub-sect. 4 of this section) the whole amount which he ought to have come provided with becomes instantly capitalized, as if it were the principal sum originally lent upon a mortgage.

And for the recovery of such capitalized amount,—together with, *semble*, interest thereon at the rate of 4 per cent. per annum, computed from the day on which the redemption was to have been made down to the date of actual payment,—and together with the rentchargee's subsequent costs and expenses properly incurred,—the rentchargee has all the remedies which, for the recovery of the principal and interest of a mortgage debt, are given

by the Conveyancing Act, 1881, to mortgagees by deed, S. 30 (4).
that is to say :—

- (1) A power to sell the charged land,—or any part thereof,—and either by public auction or by private contract; and to convey the land [in fee simple] to the purchaser, subject only to any (if there should be any) charge thereon which has priority over the rentcharge, or (if such prior chargee concurs) free from such prior charge; and to pass also to the purchaser the title deeds of the land :
- (2) A power to appoint a receiver of the rents and profits of the land,—or of any part thereof,—and to receive and take the rents and profits by means of such receiver, at the expense and peril of the owner of the land in all respects,—and without the rentchargee entering into the possession of the land or becoming liable as a mortgagee who has entered into possession of the land,—

the power of sale being the mortgagee's remedy for the recovery of his *principal money*, as well as of his interest, and his costs and charges or expenses; and the power to appoint a receiver being the mortgagee's remedy for the recovery of the interest due or accruing due on his principal money,—and incidentally for the maintenance of his security. For which latter purpose, the receiver appointed by the rentchargee, but who is (for every onerous purpose) the agent of the mortgagor, applies the rents and profits received by him in manner following, that is to say :—

- (1) In payment of rates, taxes, and other outgoings (including any rents payable) :
- (2) In payment of the interest on any prior mortgage or mortgages, and in payment of any annual or other sums which have priority :
- (3) In payment of his (the receiver's) own commission (usually 5 per cent. per annum on the amount of his yearly receipts), and in payment of insurance premiums, and of the expenses of repairs,—

S. 30 (5.) after all which payments, the receiver pays the interest due on the principal amount of the debt (being such capitalized amount as aforesaid), and pays any balance over to the owner of the land. And besides these two (which are the chief) remedies given by the Conveyancing Act, 1881, to mortgagees, the mortgagee (and therefore, under the Act of 1894, the rentchargee also after such failure of redemption as aforesaid) may exercise also the two following further remedies, that is to say :—

- (1) A power to cut and sell timber trees and other trees, in a due course of cutting,—and incidentally to contract for the cutting and sale of such trees,—and
- (2) A power to insure the land (*i.e.*, any buildings thereon or other effects proper to be insured) against damage by fire, and to add the fire-policy premiums to the amount of his debt, as further part of the capital amount thereof.

But, whereas, under the Conveyancing Act, 1881, it is provided that the mortgagee shall have entered into possession of the mortgaged land before he shall exercise his power to cut and sell timber trees or other trees, and shall not exercise his power to appoint a receiver until his power of sale has duly arisen, and shall not exercise his power of sale until one or other of the events in that behalf appointed by the act has arisen,—it does not appear that any of such restrictive provisions are annexed (by the Copyhold Act, 1894) to the exercise of the like powers by the rentchargee,—and these powers appear to be exerciseable therefore by the rentchargee, immediately upon the redeeming party's failure to redeem on the 1st January or 1st July, whichever of these two days is the day in that behalf specified in the written notice of his intention to redeem.

(5.) When it appears to the Board of Agriculture that payment or tender of the consideration for the redemption of a rentcharge has been duly

made, the board may certify that the rentcharge has been redeemed, and the certificate shall be conclusive.

S. 31.

In case the redeeming party (punctually to the day) comes provided with the redemption money (being such aggregate amount as aforesaid),—and pays it,—he obtains (in due course) the board's certificate, to the effect that the rentcharge has been redeemed; and that certificate is conclusive.

And when he comes (punctually to the day) with such redemption money, and tenders it,—but does not actually pay it,—he may, even in that case, obtain from the board a certificate of redemption; and if he does, then such certificate is also (by this section) conclusive, that the rentcharge has been redeemed.

(6.) The expenses incurred in redeeming a rentcharge under this section shall be dealt with on the same footing as the expenses incurred in redeeming a mortgage.

That is to say,—the costs and expenses of the rentchargee are added to the amount of the redemption money payable, equally as the costs and expenses of a mortgagee (of and incident to the redemption of his mortgage) would be added to the amount of the mortgage debt, and be discharged simultaneously therewith.

And the costs and expenses of the owner of the land charged with the rentcharge will be borne or paid by himself,—subject (in case he is only a limited owner of the land redeemed) to such rights as are in that behalf in the Act expressed.

31.—(1.) Where the person for the time being entitled to the receipt of a rentcharge under this act is entitled thereto for a limited estate or

Power to
sell rent
charge.

S. 31 (2). interest only, or is a corporation not authorised to sell the rentcharge except under the provisions of this act, that person may sell and transfer the rentcharge, with the consent of the Board of Agriculture given under their seal.

(2.) When a rentcharge is sold under this section, the consideration money for the sale shall be paid into court or to trustees in manner directed by this act.

Provided that when the consideration does not exceed the sum of twenty pounds for all the rentcharges under this act in the manor, the consideration may be paid, if the Board of Agriculture so direct, to the person for the time being entitled to receive the rentcharge for his own use.

The rentchargee, in lieu of having the rentcharge redeemed, may sell it,—and if he is entitled to the rentcharge for an estate in fee simple, he can of course sell it as he pleases and for whatever amount he pleases, and may receive (and give a receipt for) the purchase money: but when he is only a limited owner of the rentcharge,—he cannot sell the rentcharge, save with the consent of the board; and the board will require to be satisfied that the purchase money is sufficient,—and that purchase money must either be paid into court or else to trustees in that behalf appointed by the board,—excepting that if the aggregate amount of all the purchase moneys payable by the purchaser (in respect of all the rentcharges belonging to the one particular manor and which are being purchased by him) is only 20*l.* or less, the board may direct the selling rentchargee to retain the purchase money for his own use.

And these last-mentioned provisions apply also to any

corporation which is the owner of a rentcharge,—*scil.*, when (as at the present day is invariably, or almost invariably, the case) the corporation is not (save under this present section) able to sell and convey the rentcharge.

S. 32.

Application of Money to be paid under Act into Court or to Trustees.

32.—(1.) Where money is directed by or in pursuance of this act to be paid into court, it shall be paid into the High Court, in manner provided by rules of court, to an account *ex parte* the Board of Agriculture.

Payment
of money
into court
or to
trustees.

The money to be paid into court is paid into the Chancery Division of the court; and the title of the account, to the credit of which the money is paid in, will be:—

“*Ex parte* the Board of Agriculture,—
The Manor of in the County of .”

The money is paid in, on a direction in that behalf (called a “direction for lodgment”); which direction is made by the Paymaster-General,—and the direction is made on the request of the person desiring to pay in the money,—the request being signed by such person, and setting forth his name (and address) and the title of the account to the credit of which the money is to be lodged (Supreme Court Funds Rules, 1894, rr. 30, 40).

(2.) Where money is directed by this Act to be paid to trustees, it shall be paid—

- (a) if there are any trustees acting under a settlement under which the lord or owner of the manor or rentcharge in respect of which the money arises derives his estate or interest in the manor or rentcharge, then to those

S. 32 (3).

trustees or to such one or more of them as the Board of Agriculture direct ; and
(b) in any other case, to trustees appointed by the Board of Agriculture.

The board will in a proper case appoint trustees to receive any enfranchisement moneys, or other capital moneys, payable in respect of proceedings under the act ; but the board will not appoint such trustees unnecessarily ; and therefore, as regards the enfranchisement consideration (when that is a lump sum of money), when the manor is in settlement and the lord's title to the manor is under that settlement, if there are any trustees acting under the settlement, the money will be paid to these trustees ; or (by the direction of the board) it may be paid to one or some of them.

And so also, as regards the principal or capital money payable upon the redemption of a rentcharge, when the rentcharge is in settlement and the rentchargee's estate or interest therein is under that settlement, if there are any trustees acting under the settlement, the money will be paid to these trustees : or (by the direction of the board) it may be paid to one or some of them, short of all of them. And in all cases (excepting these two specified classes of case), the board appoints trustees.

(3.) Where money may, under the provisions of this act, be paid either into court or to trustees, it may be paid either into court or to trustees at the option (where the money arises in respect of an enfranchisement) of the lord for the time being, and (where it arises in respect of a rentcharge) of the owner for the time being of the rentcharge.

And where the capital money may, under the act, be either paid to trustees or into court (the act being wholly indifferent in the matter),—then

- (1) as regards capital moneys arising in respect of an enfranchisement,—the lord of the manor has the option ; and S. 32 (4).
- (2) as regards capital moneys arising in respect of a rentcharge,—the rentchargee has the option,—
- of determining, which two of the modes of payment shall be adopted.

- (4.)—(a) The Board of Agriculture may appoint fit persons to be trustees for the purposes of this act.
- (b) Where any trustee appointed by the Board of Agriculture dies the board shall appoint a new trustee in his place.
- (c) Where any trustee appointed by the board desires to resign, or remains out of the United Kingdom for more than twelve months, or refuses or is unfit to act, or is incapable of acting, the board may, if they think fit, appoint another trustee in his place.
- (d) An appointment under this section must be by order under the seal of the Board of Agriculture.

When an appointment of trustees is necessary, the board makes the appointment,—by order under its official seal.

And the appointment so made may be either—

- (1) An original (or first) appointment of fit persons as trustees for the purposes of the act ; or
- (2) A substitutive appointment, that is to say, the appointment of a new trustee, upon the death, resignation, or incapacity of a trustee (whether original or substitutive) appointed by the board,—or when any such last mentioned trustee refuses to

S. 33.

act, or is (*scil.*, becomes) unfit to act, or remains out of the United Kingdom for more than twelve calendar months.

Invest-
ment of
money in
court or in
hands of
trustees.

33.—(1.) Where in pursuance of this act any money in respect of an enfranchisement, or the redemption or sale of a rentcharge, is paid into court or to trustees, the money shall when paid into court be applied under the direction of the court, and when paid to trustees be applied (subject to the consent of the Board of Agriculture) by the trustees, in one, or partly in one and partly in another or others, of the following modes of application or investment; that is to say,—

- (a) in the purchase or redemption of the land tax, or in or towards the discharge of any incumbrance affecting the manor or the rentcharge, or other hereditaments settled with the manor or rentcharge to the same or the like uses or trusts; or
- (b) in the purchase of land; or
- (c) in investment in two and three quarters per centum consolidated stock, or in government or real securities, or in any of the investments in which trustees are for the time being authorised by law to invest; or
- (d) in payment to any person who would, if the enfranchisement or redemption or sale had not taken place, be absolutely entitled to the manor or the rentcharge respectively.

Capital moneys (whether in respect of an enfranchisement, or in respect of the sale of a rentcharge, or in

respect of the redemption of a rentcharge) being only paid into court or (as the case may be) to trustees appointed (in case of need) by the board, in cases where the manor or (as the case may be) the rentcharge is in settlement,—this section provides for (in effect) the preservation of such capital money,—in such form as will secure to the successive limited and other owners of the manor or rentcharge the like advantage (as far as may be) from the capital moneys as they would have had from the copyhold tenement remaining unenfranchised, or (as the case may be) from the rentcharge remaining unredeemed or being retained unsold; and the modes of application here prescribed have that effect,—the application being by direction of the court (when the money is in court), and being by direction of the board (when the money is in the hands of the trustees).

S. 33

(2) (3).

(2.) Land purchased under this section shall be conveyed to the uses, on the trusts, and subject to the powers and provisions which are, or would (but for the enfranchisement or redemption or sale) be, subsisting in the manor or rentcharge, as the case may be, or as near thereto as circumstances permit.

And this sub-section expressly provides, that any land that may have been purchased with the capital moneys lastly above referred to, shall accordingly be settled to the same (or the like) uses as the manor was settled, or (as the case may be) to the same (or the like) uses as the rentcharge was settled.

(3.) The income of an investment under this section shall be paid to the person who is or would (but for the enfranchisement) be entitled to the rents and profits of the manor, or would (but

S. 34. for the redemption or sale) be entitled to the rentcharge, as the case may be.

And (by this sub-section) the income of the investments representing the capital moneys aforesaid is to be paid to the person who (whether as lord or as rentchargee) would for the time being have been entitled to the rents and profits of the manor (if the enfranchisement had not taken place), or to the rentcharge (if the redemption or sale thereof had not taken place).

(4.) An investment or other application of money in court under this section shall be made on the application of the person who would for the time being be entitled to the income of an investment of the money.

And accordingly, it is such last-mentioned person (and he only), who by this sub-section is prescribed as the proper party to apply to the court (where the money is in court) or, *semble*, to the Board of Agriculture (where the money is in the hands of trustees),—with reference to the due investment of the money, or its due application; in other words, the limited owner for the time being (*e.g.*, the tenant for life), entitled in possession, is the proper applicant; and the remainderman need not concur in the application.

Expenses.

Expenses
of dealings
under act,
how borne.

34.—(1.) The expenses of a compulsory enfranchisement under this act shall be borne by the person who requires the enfranchisement.

(2.) A sum in respect of the expenses of a compulsory enfranchisement shall not be due or recoverable from any person, until it has been

certified by order of the Board of Agriculture to have been properly incurred.

S. 34
(3) (4).

The expenses of an enfranchisement include (by subsect. 4 of this section) all expenses incidental to the enfranchisement,—that is, which (in the opinion of the Board of Agriculture) are incidental thereto,—whether such expenses be incurred in proof of title, in identification of parcels, or otherwise.

And where the enfranchisement is compulsory, the party (whether lord or tenant) who requires and compels the enfranchisement is to pay them,—and (on the amount being duly certified by order of the board) they are recoverable against that party by the other party.

(3.) The expenses of a voluntary enfranchisement under this act shall be borne by the lord and tenant in such proportions as they agree, or in default of agreement as the Board of Agriculture direct.

(4.) All expenses which in the opinion of the Board of Agriculture are incidental to an enfranchisement, whether for proof of title, production of documents, expenses of witnesses, or otherwise, shall, for the purposes of this act, be expenses of the enfranchisement.

And when the enfranchisement is voluntary, *i.e.*, by agreement under the act,—the expenses of the enfranchisement will be borne and paid by the parties, in such proportions as the agreement itself expresses or provides for; and so far as the agreement itself does not provide for this, the board itself will (on due application made to it) ascertain and direct the proportion of the expenses to be paid or borne by each party. But, *semble*, the agreement may also provide for the entire expenses being paid

S. 34
(5) (6).

by *e.g.*, the enfranchising tenant, sub-sect. 3 of sect. 14 contemplating that the agreement may (in particular cases) so provide.

(5.) Where there is any dispute as to the amount of the expenses payable by or to any person under this act, the Board of Agriculture may ascertain the amount and declare it by order; and the order shall be conclusive as to the amount, and that it is payable by or to the persons mentioned in that behalf in the order.

Any dispute, either as to the amount of the expenses of the enfranchisement (whether voluntary or compulsory) or as to the party by whom any such expenses are properly payable, will be determined by order of the board,—to be obtained on due application in that behalf.

(6.) If, by reason of dispute as to title, it appears to the Board of Agriculture to be uncertain on whom an order to pay expenses should be made, the board may, if they think fit, grant to the person entitled to receive payment of the expenses a certificate of charge on the manor or land, as the case may be, in respect of which the expenses were incurred.

The amount of the enfranchisement expenses, once the same is certified by the board, or once the same in case of dispute as to the amount is determined by the board, being recoverable as a debt by the person entitled to receive them from the person liable to pay them (sect. 35, sub-sect. 1),—which liability is, of course, a personal liability,—

When the board is called upon to say (in its certificate determining the expenses properly incurred or in its order

determining any dispute as to the amount of such expenses) who is the party liable to pay the enfranchisement expenses, it may occasionally happen that the Board will (by reason of some dispute as to title) feel itself in a difficulty,—not knowing who the lord, for certain, is, or who the tenant, for certain, is.

S. 35.

And in such a case,—if the lord is the party liable, the board will grant to the tenant a certificate of charge on the manor; and if the tenant is the party liable, the board will grant to the lord a certificate of charge on the enfranchised tenement,—the certificate in either case being for the amount of the enfranchisement expenses payable.

35.—(1.) When money is declared by this act to be payable by any person on account of the expenses of proceedings under this act,—

Recovery
of ex-
penses.

Excluding the special manors (crown, duchy, &c.) provided for by sects. 68—78 of the act, the expenses of proceedings under the act, *which the act itself declares the liability to pay*, are the expenses following (and, strictly speaking, no others), that is to say:—

- (1) The expenses (including all such incidental expenses as aforesaid) of a compulsory enfranchisement,—these being made payable by the party requiring the enfranchisement (sect. 34, sub-sect. 1).
- (2) The expenses (including all such incidental expenses as aforesaid) of a voluntary enfranchisement,—the amount or proportion thereof which (either by agreement of the lord and tenant, or else by order of the board) has been made payable by either party (sect. 34, sub-sect. 3).
- (3) The extra expenses of a valuation (otherwise than before justices) which, under sect. 5, sub-sect. 2, sub-clause ii., should have been before the justices, but which either party requires to be before the

S. 35 (1).

valuers,—these expenses being made payable by the party requiring the more expensive mode of valuation.

- (4) The expenses of and incidental to the lord's purchase (under sect. 11) of the copyhold tenement, and which expenses (whether the purchase be completed or not) are made payable by the lord (sect. 11, sub-sect. 8); and
- (5) The expenses apportioned under sect. 79 (relative to enfranchisements made *uno actu* to copyholders in chief and their sub-infeudees).

- (a) It may be recovered as a debt due from the person liable to pay to the person entitled to receive it;

And the amount of such expenses is (by this subsection) recoverable as a debt,—*i.e.*, in an action of debt, that is to say, by action.

- (b) if the expenses are in respect of a compulsory enfranchisement, and the amount is certified by an order of the Board of Agriculture, it may be recovered in any way provided by this Act for the recovery of the consideration for the enfranchisement;
- (c) if the amount is certified by an order of the Board of Agriculture, and the person liable to pay the amount does not pay it immediately after receiving notice of the order, the person to whom the amount is payable shall be entitled to obtain from a court of summary jurisdiction a warrant of distress against the goods of the person in default;

The expenses of a compulsory enfranchisement (including such incidental expenses as aforesaid), the amount

thereof being first certified by the board (sect. 34, sub-sect. 2), may be recovered by any of the remedies which the act has provided for the recovery of the enfranchisement consideration itself in such a case; but this provision is not so simple as it looks,—and, in fact, it is rather difficult to get at its exact effect.

S. 35 (1).

For firstly, where the enfranchisement consideration is a lump sum of money, it is to be paid beforehand (sect. 8, sub-sect. 2; sect. 10, sub-sect. 4); and if these enfranchisement expenses are paid beforehand, no remedy (or, at least, no remedy beyond insisting on such payment beforehand) is required for the recovery of these enfranchisement expenses (just as none is required for the recovery of the enfranchisement consideration when paid beforehand in a lump sum).

And secondly, where the enfranchisement consideration, being a lump sum, is not (or part of it is not) paid beforehand, but (under sect. 36, sub-sect. 1) is (with the consent of the lord) charged on the enfranchised tenement,—then (under the act) the charge (at least, when effected by a certificate of charge under the act) (sect. 36, sub-sect. 6) has the following remedies attached to it by the act, that is to say:—Taking and holding such priority over other mortgages as aforesaid (sect. 36, sub-sect. 7), it is recoverable as follows: That is to say, if the charge is for a principal sum and interest,—then (a) For the recovery of the interest,—all the remedies available (under sect. 27, sub-clause (e)) for the recovery of a rentcharge under the act (sect. 41, sub-sect. 7), together with all the like remedies which an ordinary mortgagee of freehold lands in fee simple has, by the ordinary law, for the recovery of his interest (sect. 41, sub-sect. 7); and (b) For the recovery of the principal sum, all the like remedies which an ordinary mortgagee of freehold lands in fee simple has, by the ordinary law, for the recovery of his principal (sect. 41, sub-sect. 7). Possibly, therefore, for the recovery of the enfranchisement expenses (the principal amount thereof, and the interest, if any, thereon),

S. 35 (1). the party entitled to receive such expenses may be entitled to recover the amount thereof by any of the remedies lastly above referred to.

Thirdly, it is not at all clear that the enfranchisement expenses now under consideration can be recovered as the enfranchisement consideration (when it assumes the form of a rentcharge) is recoverable; for the amount of these expenses is a lump sum, recoverable at once,—and (under sub-clause (c) of this present sub-section) is, after notice of the certificate, recoverable by distress against the goods of the party liable for it, such distress being leviable upon a justice's warrant,—and being for the principal amount of the expenses.

And note, that the remedy by distress (under sub-clause (c) of this sub-section) is applicable also for the recovery of any expenses of a voluntary enfranchisement, a dispute as to which has been adjudicated upon by the board (sect. 34, sub-sect. 5); and, generally, for the recovery of any other expenses of proceedings,—proceedings of whatever character,—under the act, where the amount thereof has been certified by the board,—provided always the expenses in question are expenses of proceedings, *the liability to pay which is declared by the act itself* (sect. 35, sub-sect. 1).

(d) if the money is payable by a lord to a tenant, or by the owner of a rentcharge to the owner of the land charged, it may be set off against any money which at the time is receivable by the lord from the tenant, or by the owner of the rentcharge from the owner of the land charged, as the case may be.

This sub-clause provides generally for a set-off,—

(1) of money payable by (and due from) the enfranchisement tenant to the lord,—on any account whatever—against the money payable (on account

of the expenses of proceedings under the act) by S. 35 (2).
the lord to the tenant; and

Of money payable by (and due from) the owner of the land charged with any rentcharge,—on any account whatever,—against the money payable (on account of the expenses of proceedings under the act) by the rentchargee to the landowner;

So that, in the first group of cases,—taking, *e.g.*, the enfranchisement consideration,—that consideration (when a lump sum) may be diminished by deducting the expenses in question; and that consideration (when it is a rentcharge) may be, from time to time, half-yearly as the rentcharge accrues due, be retained by the enfranchising tenant against and in reduction of the expenses in question. And, in the second group of cases,—any instalment of the rentcharge accrued due and payable by the landowner (together with any arrears of such rentcharge) may be applied at any time in reduction of, or in discharge of, the expenses in question.

(2.) If a tenant who is a trustee, or is not beneficially interested in the land of which he is tenant, properly pays any expenses of an enfranchisement under this act, he may, except as against an unadmitted mortgagee, recover the amount paid from the person who is entitled to the land at the date of the enfranchisement.

The admitted tenant (in the case of copyholds) or the tenant (in the case of ancient freeholds) is the person (and the only proper person) to accept the enfranchisement.

But he may not be (and very frequently is not) the actual beneficial owner of the tenement.

And therefore, if he pays any enfranchisement expenses under the act, he has a right of recoupment against the beneficial owner (*i.e.*, the person who is beneficially entitled

S. 36. to the tenement) at the date of the enfranchisement; but of course a mortgagee is not such a beneficial owner,—and certainly not, if he is an unadmitted mortgagee. And if he is an admitted mortgagee, the enfranchisement should (strictly speaking) be made to him,—he being the last admitted tenant, and his admittance not being got rid of (like the conditional surrender, not followed by admittance, would have been) by the subsequent satisfaction of the mortgage debt and by the entry of such satisfaction on the court rolls; and (by sect. 39) such a mortgagee is expressly authorized to add to his mortgage debt not merely the enfranchisement consideration but also the enfranchisement expenses.

(3.) If an occupier of land properly pays any expenses of an enfranchisement under this act, he may deduct the amount paid from his next rent.

The occupying tenant, who properly pays (*i.e.*, who under legal compulsion pays) any enfranchisement expenses,—under the exigency of the remedies for such expenses given to lords by section 35,—is entitled to deduct the amount paid out of his next rent,—this subsection specifically so enacting. But, in fact, such tenant would, by the common law, be subrogated to all the rights of the lord,—*quoad* the payment, and *quoad* the remedy by the exigency of which the tenant had been compelled to pay the expenses in question; and would therefore be entitled to sue the landlord personally, in an action of debt,—that being one of the remedies of the lord to recover these expenses (sect. 35, sub-sect. 1a).

Charge for Consideration Money and Expenses.

Charge for consideration money and expenses of tenant.

36.—(1.) Where an enfranchisement is effected under this Act, the tenant may charge the land enfranchised with all money paid by him as the

compensation or consideration for the enfranchisement, and with his expenses of the enfranchisement; or, with the consent of the lord, with any compensation payable, or with any part thereof respectively. S. 36 (2).

The enfranchising tenant may (and if entitled for only a limited estate in the tenement will, but if entitled thereto for a fee simple estate will not) charge the enfranchised tenement, in favour of himself, with the whole amount of the money paid by him as and for the enfranchisement consideration, or with any part of that amount; and also with the whole amount of the money paid by him for the enfranchisement expenses, or with any part of that amount.

And (with the lord's consent, *i.e.*, when the lord is agreeable to take a charge, instead of insisting upon immediate payment) the enfranchising tenant may also charge the enfranchised tenement, in favour of the lord, with the whole amount of the money payable as and for the enfranchisement consideration, or with the part thereof remaining unpaid, or with any part thereof,—and also, *semble*, with the whole (or any part) of the amount of money payable by the tenant for the lord's enfranchisement expenses.

(2.) Where land is conveyed as the consideration for a voluntary enfranchisement under this act, and the person conveying the land is absolute owner of the land conveyed, he may charge the land enfranchised with such reasonable sum as the Board of Agriculture consider to be equivalent to the value of the land conveyed and with the expenses of the conveyance.

And where (as may happen to be the case in a voluntary enfranchisement) the enfranchisement consideration con-

S. 36 (3). sists of land conveyed by the enfranchising tenant to the lord,—

In such a case, if the enfranchising tenant was fee simple owner of the land so conveyed by him,—

He may (and if entitled for only a limited estate in the enfranchised tenement will, but if entitled thereto for a fee simple estate will not) charge the enfranchised tenement with the whole (or any part) of the fee simple value of the land conveyed by him, such fee simple value being first ascertained by the Board of Agriculture; and he may include in the charge not only the expenses of the charge (sect. 36, sub-sect. 4), but also the expenses of and incidental to the conveyance of the fee simple land conveyed by him (sect. 36, sub-sect. 2).

(8.) Where a lord purchases under this act a tenant's interest in land, he may charge the land purchased, and the manor and any land settled therewith to the same uses, with the purchase money and the expenses of the purchase.

In the case of a compulsory enfranchisement,—proceeding at the instance of the tenant,—if the lord, by virtue of the power in this behalf reserved to or vested in him by sect. 11 of the Act, purchases up the copyhold interest, and pays the purchase-money, and pays also (as he must do) all the copyholder's expenses of and attending the purchase (including his, the copyholder's, expenses of and incident to the purchase deed, and his the copyholder's expenses of and incident to the preliminary valuation, if any),—

In such a case, the lord may (and if entitled to the manor for a limited estate only will, but if entitled to the manor for the fee simple estate will not) charge the purchased tenement, and also the manor (and any lands settled therewith), with the amount so paid by him or the purchase money aforesaid, and for the expenses aforesaid (sect. 36,

sub-sect. 3), together with the costs of the charge (sect. 36, sub-sect. 4); and, apparently, the charge extends to include also all the lord's own expenses of and attending or incidental to the purchase,—so that by means of this charge the lord acquires a full indemnity.

S. 36
(4) (5).

(4.) When a charge may be made under this section, the expenses of the charge may be included in the charge.

The charges which may be made under this section are:—

- (1.) The charge in favour of the enfranchising tenant of the money paid as the enfranchisement consideration, and of the money paid for the expenses of the enfranchisement;
- (2.) The charge in favour of the enfranchising tenant of the value of any fee simple land of his conveyed by him as and for the enfranchisement consideration;
- (3.) The charge in favour of the lord of any part of the enfranchisement consideration which (with the lord's consent) is left unpaid by the tenant; and
- (4.) The charge in favour of the lord of the amount of the purchase money paid by him for his purchase of the copyhold tenement, and for the expenses of such purchase.

And (by this sub-section) the costs of the charge may, in each instance, be added to the charge.

(5.) A charge under this section may be for a principal sum and interest thereon not exceeding five per cent. per annum, or may be by way of terminable annuity calculated on the same basis.

And as regards all the four varieties of charge lastly above specified,—

The charge may (as regards the repayment of the amount

S. 36

(6) (7).

secured thereby) take any one of the following forms, that is to say :—it may be either (1) A security for a principal sum, with interest thereon at the rate of (not more than) 5 per cent. per annum ; or, (2) A security for £. per annum, to continue for years,—and all the yearly payments having been duly made, the charge to cease,—this second form of charge being (by the act) called a charge by way of *terminable annuity*.

(6.) A charge under this section may be by deed by way of mortgage, or by a certificate of charge under this act.

And the charge,—whether by way of securing a principal sum with interest thereon, or by way of securing a terminable annuity,—may be effected either (1) By ordinary mortgage deed, or (2) By certificate of charge under the act,—and a form of such certificate (and a form for the transfer thereof) is given in the first schedule to the act ; and the particulars to be stated in the certificate, together with the remedies thereon and other the incidents thereto, are those which are stated in sect. 41 of the act.

(7.) A charge under this section shall be a first charge on the manor or land subject to the charge, and shall have priority over all incumbrances whatsoever affecting the manor or land, except tithe rentcharge and any charge having priority by statute, notwithstanding that those incumbrances are prior in date.

Like all other charges under the act,—each one of the four charges specified above (in the notes to this section) is entitled to priority over all other mortgages, although these latter would otherwise have had priority,—save only

that tithe rentcharge (if any) and any charge entitled to statutory priority is to retain its priority.

S. 37.

So that, *nota bene*, the purchase money paid by the lord (and the expenses of the purchase) will be secured on the manor, &c., in priority to any already subsisting mortgages on the manor,—and this is, *semble*, because the land so purchased becomes, *semble*, held on the like uses as the manor, and subject to the incumbrances affecting the manor,—such purchased land vesting in the lord, and, *semble*, as such (sect. 11, sub-sect. 6) ; or at any rate, the Board of Agriculture will see that it does,—the board having the power to direct the form of conveyance, and being in fact under a duty to do so.

(8.) Any money secured on land may be continued on the security thereof notwithstanding a charge under this section.

Trust moneys are not in general to be lent on second mortgage; and the four charges above specified taking priority over subsisting first mortgages (even where these latter are mortgages for securing trust moneys),—

Therefore it is provided, by this sub-section, that such subsisting mortgages may lawfully be continued, notwithstanding that their priority has been destroyed to the extent of letting in the charge.

37.—(1.) Expenses incurred by a lord, in proceedings under this act, may—

Charge
for lord's
expenses.

- (a) be paid out of any consideration or compensation money (where it is a gross sum) arising in respect of the proceedings ; or
- (b) be charged, together with the expenses of the charge, on the manor or on land settled to the same uses as the manor, or on any rentcharge arising in respect of the

8. 37

(2) (3).

proceedings or in respect of any enfranchisement made under this act within the manor.

This section makes special provision in favour of lords (*scil.*, lords entitled for only limited estates or interests in the manor) touching the expenses incurred by them in connection with any proceedings under the act,—other than the expenses (specifically provided for already by section 36) incurred by lords in connection with their purchase (under sect. 11) of the copyhold tenement.

And the present section provides, that as regards all the lord's expenses (not paid by the enfranchising tenant), they may be paid and satisfied (*i.e.* deducted and retained) out of the enfranchisement consideration (when it consists of a lump sum of money); or (in the alternative) may be charged on the manor, or on any lands (including any rent-charges) settled therewith; and the costs of the charge are to be included in the charge.

(2.) A charge under this section shall be by deed by way of mortgage, or by a certificate of charge under this act.

And the charge may be created either by the certificate of charge appointed by the act, or by any ordinary mortgage deed.

(3.) This section does not apply to the expenses of a purchase by the lord of a tenant's interest under this act.

We have seen, that, the lord, purchasing under sect. 11, obtains (under the specific provisions of sect. 36) a full indemnity, in respect not only of the purchase money paid, but also of the expenses of the copyholder paid by the lord and of his (the lord's) own expenses; and that appears to be the only reason for this sub-section excluding from the provisions of this section the expenses of these purchase proceedings under the act.

38. If the tenant (or a person claiming to be tenant) pays any money in respect of the compensation or consideration for an enfranchisement under this act, and is afterwards evicted from the land enfranchised, he may claim against the land enfranchised the amount of the money or so much of it as is not charged on the land under the other provisions of this act; and that amount shall be a charge on the land with interest thereon at the rate of four per cent. per annum from the date of the eviction.

S. 38.

Charge for
considera-
tion
money
where
tenant's
title
proves
bad.

The enfranchisement adds an equivalent value to the land; and it operates, *semble*, for the benefit of the true copyholder, and according to the true title.

Therefore, under sect. 36, sub-sect. 1, the enfranchising tenant may, as we have seen, charge the tenement with such part of the enfranchisement consideration as the lord consents to leave outstanding,—or even (if the lord consent) with the whole of the enfranchisement consideration.

And accordingly, after the enfranchisement, if the enfranchising tenant is evicted from the tenement (by some prior or preferable copyhold title),—he is (by this section) enabled to claim against the enfranchised tenement such portion of the enfranchisement consideration (being money) as he has paid,—and even the whole of the enfranchisement consideration, if he has paid the whole of it. And, of course, as regards the proportion (if any) of the enfranchisement consideration which the enfranchising tenant has (with the lord's consent) charged on the enfranchised tenement, that charge (even where it extends to the whole enfranchisement consideration) will hold good in the lord's favour, and as against the prior or preferable evicting title.

S. 39. **39.** If a mortgagee pays under this act any compensation or consideration money or expenses in respect of an enfranchisement of (or redemption of a rentcharge on) the mortgaged property, the amount so paid shall be added to his mortgage; and the mortgaged property shall not be redeemable without payment of that amount and interest thereon.

Charge for
money
paid by
mortgagee.

(1.) A mortgagee by surrender who is in possession of the copyhold tenement (sect. 1), whether or not, *semble*, he has also been admitted,—provided only his surrender has been entered on the rolls (sect. 94),—may (under the act) compel and require enfranchisement, or may (under the act) be compelled to accept an enfranchisement; and may also (under the act) effect a voluntary enfranchisement (sect. 14);

And (under this section) he is entitled to add to his security the amount of the enfranchisement consideration and also the amount of the enfranchisement expenses.

(2.) And,—having regard to the fact that the enfranchisement consideration (in the case of a voluntary enfranchisement) is, until payment thereof and of the lord's expenses, a charge upon the land, and a charge entitled to priority over the mortgagee's security (sect. 19); and to the further fact, that every rentcharge created under the act is also entitled to priority over the mortgagee's security (sects. 27, 36); and to the further fact, that the mortgagee (if in possession) is entitled to redeem the rentcharge (sect. 30, sub-sect. 1), adding the expenses of the redemption proceedings to the amount of the principal money paid for the redemption (sect. 30, sub-sect. 6),—it is only natural, that (under this sub-section) such a mortgagee should be entitled to add to his security the amount paid for the redemption and for the expenses of the redemption.

40. Any company authorized to make advances for works of agricultural improvement, to owners of settled and other estates, may (subject and according to the provisions of its Act of Parliament, charter, deed, or instrument of settlement) make advances (to owners of settled and other estates) of such sums as may be required,—for the payment of any compensation or consideration for enfranchisement under this act, or of any expenses chargeable on a manor or land under this act or otherwise; and take for their repayment a charge for the same in accordance with those provisions respectively.

Sa. 40, 41.

Power to advance sums required for purposes of act.

As regards the enfranchisement consideration (where that is a lump sum of money), the tenant, instead of paying it himself and taking a charge therefor in his own favour (sect. 36, sub-sect. 1), may borrow it from any land improvement company which has power to lend, and give to such company the equivalent charge therefor, which he might himself have created in his own favour,—and, of course, with the like priority.

And so, also, as regards any enfranchisement expenses or other expenses of proceedings under the act,—whether payable by the lord or by the tenant,—and being expenses which are (under the act) chargeable against the manor or (as the case may be) against the enfranchised tenement,—such company may, on lending the amount required to pay these expenses, take the equivalent charge therefor, which the party liable therefor might himself have created in his own favour,—and, of course, with the like priority.

41.—(1.) A certificate of charge under this act shall be under the seal of the Board of Agricul-

Certificates of charge.

S. 41

(2) (3).

ture, and shall be countersigned by the person at whose instance the charge is made.

The charges authorized by the act (sects. 27, 36) may, in general, be effected either by an ordinary mortgage deed or by a certificate of charge,—

And the certificate of charge has, in a simple case (that is to say, in the ordinary case) an advantage over the mortgage deed,—being very concise,—and yet having annexed thereto (as implied therein) all the usual remedies of a mortgagee,—and being also readily transferable (First Sched., Forms 2 and 3).

Where the charge is effected by certificate of charge, the party giving it (*i.e.*, the party at whose instance the charge is made) is to sign (*i.e.*, countersign) the certificate,—the certificate itself being under the seal of the Board of Agriculture, and the charge taking effect by virtue of the act and of the certificate, and not by force of any words of purported grant or charge.

The certificate bears the same stamp as if the charge effected thereby had been effected by an ordinary mortgage deed (sect. 58, sub-sect. 3).

(2.) If the charge is by way of terminable annuity, the certificate shall state the amount of the annuity and the term during which it is payable.

(3.) If the charge is for a principal sum and interest, the certificate shall state the amount of the principal sum and the rate of interest; and shall contain a proviso, declaring that the certificate shall be void on payment of the principal with any arrears of interest due thereon at a time specified in the certificate or at the expiration of an ascertained notice.

Form No. 2 in first schedule is in the alternative,—one alternative being where the charge is by way of terminable

annuity, and the other alternative being where the charge is of a principal sum and interest.

S. 41
(4 (5).

The form speaks for itself.

Charges by way of terminable annuity are (under the act) available, in all or any of the four cases specified in sect. 36,—and which are separately enumerated in the notes to sub-sect. 4 of that section.

But charges by way of terminable annuity are not available (under the act), except where the act so provides; and are not available (*e.g.*) where (in a compulsory enfranchisement) the enfranchisement consideration is the rentcharge created by the award of enfranchisement (sect. 10, sub-sect. 2); or where (in a voluntary enfranchisement) the enfranchisement consideration, being money, is the rentcharge created by the enfranchising tenant by deed (sect. 17, sub-sect. 3).

(4.) The manor or land charged by the certificate may be described by reference to the proceedings under this act in respect of which the charge is made, or otherwise as the Board of Agriculture see fit.

The certificate of charge will, in general, have a schedule annexed thereto; and in that schedule will be contained a description of the land charged thereby.

And this description of the parcels may be either a detailed setting forth of the parcels with their situations, acreages, and boundaries or abutments,—or may be a short referential description, as thus: “The manor of ”: or thus: “The tenements comprised in a certain enfranchisement, dated the day of , 18 ”; or the description may take any other convenient form, being one which the board shall consider suitable.

(5.) The certificate and the charge made

S. 41 (6). thereby shall be transferable by indorsement on the certificate.

The form of transfer is Form No. 3 in First Schedule.

And just as the certificate of charge takes effect by virtue of the act and of the seal of the board, and not by virtue of any words of grant or of purported charge by the party at whose instance it is made,—

So the form of transfer, whereby the certificate alone purports to be transferred, operates by virtue of the act (*scil.*, of this sub-section) to transfer the charge itself,—the full benefit thereof, and of all the remedies available for the recovery of the charge, as fully and effectually as if the most formal words of transfer had been used, which are ordinarily used upon the transfer of a mortgage debt.

(6.) A certificate of charge, taken by the lord of any manor or by the tenant or owner of any land, shall not merge in the freehold or other estate in the manor or land,—unless the owner of the charge, by endorsement on the certificate or otherwise, declares in writing his intention that the charge shall merge.

The owner of land who buys up (and takes to himself a transfer of) a mortgage on the land,—

If he is the fee simple or fee tail owner of the land, is presumed (in the general case) to have discharged the mortgage, there being no object for keeping it alive;

But if he is entitled to the land for his life only, or for some other limited estate only, then he is presumed, in general, to intend to keep the charge alive,—saving himself during his life from the further necessity of paying the interest thereon, and passing to his legal personal representatives upon his death the full benefit of the charge and of the mortgage debt secured thereby.

And it being in general a limited owner only, whether

of the enfranchised land, or of any other land, or of the manor, who takes a charge thereon in his own favour, it is by this sub-section provided, that such charge shall not merge in his freehold estate, unless he signifies in writing his intention that it shall merge therein.

41 (7).

(7.) The owner for the time being of a certificate of charge shall have,—for the recovery of any sum in the nature of interest or periodical payment becoming due under the certificate,—the like remedies as the owner of a rentcharge under this act has in respect of his rentcharge; and shall also have,—in respect of every sum whether in the nature of interest or periodical payment or principal sum secured by the certificate,—the like remedies as a mortgagee in fee simple of freehold land has in respect of the principal sum and interest secured by his mortgage.

The certificate of charge carries with it (as if expressly contained therein) the following remedies for the recovery of the money secured by the charge, that is to say,—

- (1.) Where the charge is of a principal sum and interest thereon,—all the remedies of an ordinary mortgagee in fee simple of freehold lands, that is to say,—A power of sale and a power of foreclosure failing redemption, together with (for recovery of the interest in arrear) the remedies nextly mentioned, that is to say,—
- (2.) Where the charge is of a terminable annuity, all the remedies which the act gives to a rentchargee, that is to say, the remedies given by sect. 27, sub-clause (e), that is to say,—
 - (a) A right of distress,—for the arrears and incidental costs;

S. 41 (8).

- (b) A right to enter into receipt of the rents and profits of the land charged,—for the arrears and growing payments, and the incidental costs;
- (c) A right to create a trust term of years in the land charged,—and by mortgage or sale of the lands for the whole or any part of the term, to raise the arrears and future instalments, and the incidental costs;

Which three several remedies are available respectively, at the times and subject to the conditions respectively which are mentioned in detail in the notes to sect. 27, sub-clause (e), *supra*.

(8.) A certificate of charge and a transfer thereof may be in the forms contained in that behalf respectively in the first schedule to this act, or in forms to the like effect.

The form given of a transfer will hardly in any case want modification.

But the form given of the certificate of charge will, in every case, want adaptation to the circumstances of the case—

- (1.) If the charge is of a terminable annuity, the certificate will express the amount of the yearly payment, and the term during which it is to continue (sect. 41, sub-sect. 2);
- (2.) If the charge is of a principal sum and interest, the certificate will so state, mentioning the principal sum and the rate of interest thereon; and it will also contain a defeasance proviso, mentioning that on payment, &c., at the time, &c., the certificate (*i.e.*, the charge) shall be void (*i.e.*, discharged) (sect. 41, sub-sect. 3); and
- (3.) In each case, whether the charge is for a terminable annuity or for a principal sum and interest, the certificate will contain (in the schedule thereto) an

accurate description of the land charged, whether such description is or consist of a detailed enumeration of the parcels, or is merely the short referential description appointed by the Act (sect. 41, sub-sect. 4).

S. 42.

PART V.—ADMINISTRATIVE PROVISIONS.

Notice of Right to Enfranchise.

42.—(1.) On the admittance or enrolment of any tenant, the steward of the manor shall, without charge, give to the tenant admitted or enrolled, a notice of his right to obtain enfranchisement.

Notice of right to enfranchise to be given by steward.

(2.) The notice shall be in the form contained in that behalf in the first schedule to this act, or in a form to the like effect.

(3.) If a steward neglects on any admittance or enrolment to give the notice required by this section, he shall not be entitled to any fee for that admittance or enrolment.

The notice appointed by this section is a mere reminder, —given on behalf of the lord to the tenant,—of the right of the tenant to obtain an enfranchisement of the land, if he desires it.

But the notice need not be attended to, in any way, by the tenant.

The steward is required to give this notice to the tenant, —on every occasion of an admittance or enrolment: that is to say, —on every licence of the lord (when a licence of the lord is required) to make any conveyance of the tenement; and on every ceremony or other act of court whereby the tenancy is perfected,—and even on every “*assent*” (of the lord), whereby the tenancy is perfected, that is to say, on every “*implied admittance*.”

Ss. 43, 44. And the steward is to make no charge for giving the notice (not even for his disbursements, if any, incidental thereto).

And if the steward fails (say, through inadvertence) to give the notice, he is thereby disentitled to his fee in respect of the admittance or enrolment, or licence, or ceremony or other act of court, or "*assent*,"—a penal provision which will be construed as extending no further than the words of it extend,—and so will not extend to disentitling the steward to any (if there should be any) charges of or incidental to the admittance or enrolment, or licence, or ceremony or other act of court, or "*assent*," which he may be rightly entitled to make.

Parties to Proceedings under Act.

Limited
owners.

43. Anything by this act required or authorised to be done by a lord or by a tenant may be done by him, notwithstanding that his estate in the manor or land is a limited estate only.

In sect. 94, lords and tenants are defined in a very extensive sense, and so as to include (among others) lords and tenants entitled for limited estates or interests only.

And by this present section, all such limited owners are fully empowered to do everything which the act requires to be done,—and also everything which the act authorises to be done: that is to say, these limited owners may (subject to the provisions of the act) in all respects act as if they were respectively fee simple owners.

Trustees.

44—(1.) Anything by this act required or authorised to be done by a lord or by a tenant may be done by him, notwithstanding that he is a trustee.

(2.) Where the lords or the tenants are trustees and one or more of the trustees is abroad or is

incapable or refuses to act, any proceedings necessary to be done by the trustees for effecting an enfranchisement under this act may be done by the other trustee or trustees.

S. 45.

And although the lord (or the tenant) should be a trustee only,—and not beneficially interested,—he may (subject always to the provisions of the act) act in all respects as if he was the absolute beneficial owner. And when there is more than one trustee, then so far as regards all proceedings necessary for effecting an enfranchisement,—but, *notu bene*, no other proceedings,—under the act, one or more of the trustees (short of all of them) may act, that is to say, where the other or others of them refuse to act, or are incapable of acting, or are out of England.

45. When a lord or a tenant or any person interested in an enfranchisement or redemption or sale or otherwise under this act is an infant or a lunatic, or is abroad, or is unknown or not ascertained, anything by this act required or authorised to be done by or in respect of him shall be done on his behalf,—if he is an infant and has a guardian, by his guardian; and if he is a lunatic and there is a committee of his estate, by the committee; and if he is abroad and has an attorney authorised in that behalf, by his attorney; and in every other case, by some fit person appointed by the Board of Agriculture to represent him for the purposes of this act.

Represent-
tation of
infants,
lunatics,
&c.

Also, an infant (lord or tenant or rentchargee),—by his guardian (if any); a lunatic (lord or tenant or rentchargee),—by his committee (if any); and a lord (or tenant or rentchargee) out of England,—by his attorney

Ss. 46, 47. (if any),—may do anything which the act requires to be done by him and anything which the act authorises to be done by him,—incidental to the enfranchisement proceedings, or incidental to the other proceeding (whatever it may be) that is proceeding under the act.

And for an infant who has no guardian; and for a lunatic who has no committee; and for a person out of England who has no attorney,—the Board of Agriculture appoints a fit person by whom (as by his representative) the infant or lunatic or party out of England may do the things aforesaid required or authorised to be done by him under the act; and the board will (when necessary) appoint such fit person to act as such representative, in all other cases, as *e.g.*, when the lord (or tenant or rentchargee) is unknown,—or is not ascertained.

Married woman for purposes of act to be feme sole.

46. A married woman being lady of a manor or tenant shall, for the purposes of this act, be deemed to be a feme sole.

And the lord (or tenant), when he is a female and married, is for all the purposes of the act deemed to be discovert,—so that the husband need not concur with the wife in anything,—either in compelling or in accepting an enfranchisement, or in agreeing an enfranchisement, or in any matter incidental to either.

But this section does not (or, at least, does not clearly) extend to the case of a rentchargee when he is a married woman,—save possibly so far as regards the first creation of the rentcharge; for after the rentcharge has been once created, the owner thereof may not be (*i.e.*, continue to be) either a lord or a tenant,—but some third person the transferee of the rentcharge,—and this section applying only to lords and tenants, its provisions regarding married women are confined to married women being either lords or tenants.

Steward in general to represent lord.

47.—(1.) A lord for the purposes of this act may act either on his own behalf or by his steward,

or may appoint an agent other than his steward to act for him. S. 48.

(2.) Unless and until a lord has given to a tenant and to the Board of Agriculture notice in writing that he intends to act on his own behalf,—or has appointed an agent (to be named in the notice) other than his steward to act for him,—the steward shall for the purposes of this act represent the lord in all matters of procedure; and the tenant and the board may treat the steward as the agent of the lord for the purpose of giving and receiving notices, and (except where this act expressly requires a special authority from the lord) of making agreements, and of all other matters relating to enfranchisement.

The steward in general acts for the lord; and for that purpose, he wants no express power of attorney to constitute him the lord's agent,—save only when the proceeding is an enfranchisement and the mines and minerals (or the franchises) referred to in sect. 23, sub-sect. 1, are to be dealt with by the enfranchisement; in which latter case (as is expressly provided by sect. 23, sub-sects. 1, 2),—and also (under sect. 86, sub-sect. 5) in the case of the grant of a licence to alienate,—the steward must have an express and specific power from the lord to act for him.

48.—(1.) A lord or tenant or other person interested in any proceedings under this act may by power of attorney appoint an agent to act for him in the execution of this act. Appoint-
ment of
agent by
power of
attorney.

(2.) The power of attorney must be in writing, and must be signed by the person giving it, or, if it is given by a corporation aggregate, be sealed or stamped with the seal of the corporation.

S. 48
(3)-(5).

(3.) The power of attorney, or a copy thereof authenticated by the signature of two witnesses, must be sent to the Board of Agriculture.

Lords, tenants, rentchargees, and others may act by agents,—being agents appointed by writing.

The execution of the writing by the party executing it ought apparently to be witnessed by two witnesses,—seeing that the copy of the power which is to be forwarded to the Board of Agriculture must have two witnesses to sign it by way of authenticating the copy sent.

(4.) The appointment of an agent under this section may be revoked by the person who gave it sending to the board notice in writing, signed, or sealed as the case requires, of the revocation.

The power may be revoked by the principal,—the revocation being by instrument in writing,—signed if the power was signed, and sealed if the power was sealed,—and duly forwarded to the Board of Agriculture; and it is the sending of the instrument of revocation to the board which (under this sub-section) operates as the revocation.

(5.) When an agent has been appointed under this section, and the agency is subsisting—

- (a) everything which is by this act directed or authorised to be done by or in relation to the principal, may be done by or in relation to the agent; and
- (b) the agent may concur in and execute any agreement or application or document arising out of the execution of this act; and
- (c) every person shall be bound by the acts of

the agent acting within his authority, as if § 49.
they were the acts of the principal.

And note, the agency is subsisting until the instrument of revocation is sent to the Board.

(6.) A power of attorney under this section may be in the form mentioned in that behalf in the first schedule to this act, or in a form to the like effect.

The form of power of attorney given in the schedule is absolute and general; and it will want no modifying in any case, except when it is desired to limit the powers of the agent named therein and appointed thereby,—which may be occasionally necessary.

The opposite party must, of course, examine the power,—in order to know if it is a general power or a limited power; and in case it is a limited power, in order to know the extent of the power,—it being only matters within the power of the agent that are (by the act) made binding on the principal.

The power of attorney is signed by the party executing it,—or (if he is a corporation) it is sealed with the corporate seal; but the signature or sealing need not (apparently) be witnessed; nevertheless the copy which is to be sent to the Board of Agriculture must be authenticated by the signatures of two witnesses (sect. 48, sub-sect. 3): and the two signatures must (apparently) have been witnesses of the execution of the power; for how otherwise would they be witnesses? and witnesses of what?

49.—(1.) The proceedings for or in relation to an enfranchisement under this act shall not abate by the death of the lord or tenant pending the proceedings. Death
pending
proceed-
ings.

S. 49 (2). (2.) Where an admittance or enrolment is necessary in consequence of the death, the admittance or enrolment shall be made,—but no fine, relief, or heriot shall be payable to the lord in consequence of a death (or any admittance or enrolment on a death) occurring between the date of a notice to enfranchise or a completed agreement for enfranchisement under this act, and the enfranchisement in pursuance of that notice or agreement; and the compensation shall be ascertained on the same footing as if the enfranchisement had been effected immediately after the commencement of the proceedings.

The death of either lord or tenant pending an enfranchisement must necessarily affect the enfranchisement proceedings more or less: but an effective agreement for an enfranchisement (or what this section calls a completed agreement for enfranchisement) would, by the common law, be specifically enforceable by or against the legal representatives of the deceasing party, at the suit of, or in a suit against, the other party or his legal representatives: and similarly, a notice requiring enfranchisement, whether given by the lord or by the tenant, would also confer a right enforceable by or against either the lord or the tenant or his legal representatives at the suit of, or in a suit against the other party or his legal representatives: and section 50 of this act,—although the section has a much wider scope,—clearly includes, among the “*rights*” and “*liabilities*” therein referred to, this right of specific performance, in the case both of voluntary and of compulsory enfranchisements.

But what the present section does, is to exclude from arising (upon the death of either lord or tenant) certain specified things which would otherwise have arisen in consequence of the death, that is to say:—If either party

desires the proceedings to continue,—then they are to continue, without making any fresh start; and the legal representative of the deceased tenant (when the tenant is the deceasing party) is for that purpose to be admitted or enrolled,—and this without his paying any fine to the lord on or in respect of the admittance or enrolment,—but, of course, the steward's proper charges (including, possibly, his fee in respect of the admittance or enrolment) must be paid in some form or other, and most probably as portion of the enfranchisement expenses.

S. 50.

And the section expressly provides, that the enfranchisement consideration (being money) shall be ascertained as at the date of the commencement of the enfranchisement proceedings, that is to say,—in the case of a compulsory enfranchisement, at the date of giving the notice to enfranchise; and in the case of a voluntary enfranchisement, at the date of the completed enfranchisement agreement.

Then, in the case of the compulsory enfranchisement, the rentcharge commencing as from the date of the notice given to enfranchise (sect. 8, sub-sect. 1),—and being at the rate of 4 per cent. per annum on the enfranchisement consideration, the lord loses nothing by this apparent loss of a fine.

And in the case of the enfranchisement being voluntary, the loss to the lord of a fine must (in some way or other) be compensated, by the rentcharge being expressed (in the Board of Agriculture's memorandum of confirmation of the enfranchisement deed) to commence as from some date (to be specified in the memorandum) and which shall be proper to prevent this loss to the lord.

50. All rights conferred and all liabilities imposed by this act on a lord or on a tenant shall be held to be conferred and imposed respectively on the successors in title of the lord and tenant unless a contrary intention appears.

Succession
of rights
and
liabilities.

S. 51.

This section plainly applies as well during the enfranchisement proceedings as also after the enfranchisement has been completed.

The legal representative (or other the "*successor in title*") of the deceasing party,—or his alienee *inter vivos*,—acquires all the (continuing) rights and becomes subject to all the (continuing) liabilities of the original party (whether lord or tenant).

The notes to section 49 show the operation of this present section, where there is a death pending the enfranchisement proceedings.

And it is only necessary here,—by way of illustrating the operation of this section after the enfranchisement has been completed,—to point out, that the remedies incident to a rentcharge in the hands of the original rentchargee will continue to attach to it in the hands of every subsequent alienee of the rentcharge.

But the section is general,—and applies in every case, and as regards every incident of the enfranchisement,—except where its operation is expressly or manifestly excluded.

Power to
require
declara-
tion as to
lord's title.

51.—(1.) Before any enfranchisement under this act, the Board of Agriculture may (if they think fit) require the lord or his steward to make a statutory declaration, in such form as the board direct, stating who are the persons for the time being filling the character or acting in the capacity of lord, the nature and extent of the estate and interest of the lord in the manor, and the date and short particulars of the deed, will, or other instrument under which he claims or derives the title, and the name and style of the person in whose name the court of the manor was last holden, and the date of the holding of

that court, and the incumbrances, if any, affecting S. 51 (2).
the manor ; and the board may accept a declaration made under this section for the purposes of this act.

The statutory declaration provided for by this section (Form No. 14 in Appendix), can hardly have anything to do with the enfranchising tenant,—seeing that the enfranchisement enures according to the copyhold title, and free from all defects in or incumbrances attaching to the manorial title.

The statutory declaration provided for by this section, is therefore primarily and principally required,—to enable the Board of Agriculture to conduct the proceedings in a due and proper manner, and especially to enable them to decide as to whether or not the enfranchisement consideration, when a gross sum, should be paid to the lord, or put aside, for the lord's incumbrancers and others.

(2.) If the lord or his steward does not make the declaration which he is required to make in pursuance of this section, or if in the opinion of the board the declaration does not fully and truly disclose all the necessary particulars, or if the lord refuses to give any evidence which the board think proper and necessary to show a satisfactory *prima facie* title in the lord, or if the board think that the incumbrancers should be protected, the board may, if they think the justice of the case requires it, direct the compensation or consideration where it is a gross sum to be paid into court or to trustees in manner directed by this act.

The statutory declaration provided for by this section is intended for the protection primarily of the divers

S. 51 (3). persons entitled to or interested in the manor, and more particularly of those of them who are incumbrancers on the manor. But the declaration is also a great convenience to the Board of Agriculture in its conduct of the enfranchisement proceedings,—and indirectly therefore the enfranchising tenant is also benefited by it.

(3.) Where the lord applies to the board to effect an enfranchisement under this act, the board shall if the tenant of the land proposed to be enfranchised so requires, satisfy themselves of the title of the lord.

The title of the lord may be proved by the statutory declaration provided for by this section,—the concluding words of the first sub-section enabling the board to accept it as proof of the lord's title to the manor.

But for the reasons shortly mentioned in the notes to the first and second sub-sections, it is difficult to see any benefit to the enfranchising tenant from the statutory declaration which he is (by this sub-section) enabled to insist upon, or to require,—save possibly when he wishes to stop the enfranchisement proceedings *in limine*.

Having regard, however, to the possibility of the manor being subject to any such fee-farm rent as is referred to in sect. 56 of the act,—or to any such other charge as is therein referred to,—being rents and charges which the enfranchised tenement would (or might) continue subject to,—even after the enfranchisement,—unless the incidence thereof was shifted under the provisions of that section,—the enfranchising tenant may (occasionally) have a real and serious interest in having the lord's title proved to the satisfaction of the Board of Agriculture.

A fee-farm rent, although it issues out of land, is a separate hereditament from the land it issues out of: consequently, the enfranchised copyhold tenement would

become subject to that rent, if the manor was held subject thereto; and the whole rent might, in consequence, fall to be paid by the enfranchising tenant,—unless (by discovery of the lord's title) it was sooner discovered, and being discovered was shifted on to some other land,—or some other provision or appropriation was made therefor.

S. 52.

Questions arising in Proceedings under Act.

52. On an enfranchisement under this Act—

Boun-
daries.

- (1.) Where the identity of any land cannot be ascertained to the satisfaction of the valuers, if the quantity of the land is mentioned on the court rolls of the manor, and is therein stated to be in statute measure, the land shall be taken to be of that quantity; and in every other case, the quantity shall be determined by the valuers.

If the tenement can be identified by the valuers, they will, of course, ascertain the quantity thereof by simply measuring it up.

And otherwise they are (by this sub-section) to take the quantity as being what the court rolls represent it to be,—when the quantity purports to be thereon given in statute measure.

And when this last-mentioned mode of ascertaining the quantity is not available, then the quantity must be ascertained (in some other way) by the valuers,—and the valuers cannot escape from this duty, however difficult it may be for them to ascertain the quantity, when they have neither the identity proved nor the statute acreage given.

- (2.) Where the land is not defined by a plan on the court rolls, the valuers shall, if requested

S. 52 (3).

in writing by the lord or the tenant, define the boundaries of the land by a plan.

Provided that a plan shall not be made (except by agreement between the lord and tenant) where it appears by the court rolls, or otherwise, that the boundaries of the land have been for more than fifty years last past treated as being intermixed with the boundaries of other lands and as being incapable of definition :

The valuers, besides ascertaining the acreage of the enfranchised tenement, are also (on the request of either lord or tenant) to define (by means of a plan) the boundaries of the tenement when such boundaries are not (by some plan on the court rolls) defined already,—except in cases where, for more than fifty years last past before the date of the enfranchisement proceedings, the boundaries of the tenement have been treated as incapable of definition (through having been, *e.g.*, intermixed with the boundaries of other land) : in which latter case, although the valuers must still define the boundaries,—unless, *semble*, where the identity is disputed between the parties,—they are not to define them by a plan,—save where both parties (lord and tenant) agree to the plan being made : but upon such agreement, the valuers will make a proper plan. The lord and tenant may also, in case of doubt, agree some plan themselves, and so save the valuers the trouble, and themselves the expense.

(3.) Where, after the appointment of valuers, there is any doubt or difference of opinion as to the identity of any land, the lord or tenant may apply to the Board of Agriculture to define the boundaries of the land for the

purposes of the enfranchisement, and the board shall ascertain and define the boundaries in such manner as they think proper:

S. 53.

When (as often happens) the identity of the copyhold tenement is matter of dispute between the parties,—or is otherwise a matter of doubt or difference,—either party may, at any time after the appointment of valuers, apply to the Board of Agriculture to ascertain (for the purposes of the enfranchisement) the identity of the tenement,—that is to say, to define (for these purposes) the boundaries of the tenement; and upon such an application, the board will (in such manner as they please to adopt) ascertain the identity, and define the boundaries, of the tenement.

- (4.) A plan made under this section and approved by the board, and a definition of boundaries by the board under this section, shall be conclusive as between the lord and the tenant.

And any such definition of boundaries as last aforesaid (that is to say, a definition thereof by the board made on the application of either party to the enfranchisement proceedings) is (for the purposes of the enfranchisement) conclusive as between the lord and the tenant.

Also, the plan (if any) made by the valuer,—when such plan is (provided it is) approved by the board,—is also (for the purposes of the enfranchisement) conclusive as between the lord and the tenant.

53.—(1.) If any objection is made or question arises,—in the course of the valuation in a *compulsory* enfranchisement under this act,—in relation to any alleged custom, or the evidence thereof, or any matter of law or fact material to

Power for board to decide questions arising in enfranchisements.

S. 53. the valuation or arising on the enfranchisement, the lord or tenant may require, in writing, that the question be referred to the Board of Agriculture; and the board shall inquire into and decide the question, and their decision shall, subject to the appeal provided by this section, be final.

In a compulsory enfranchisement,—when each party is at arm's length,—disputes very frequently arise over some item to be valued in, by the valuers, in their endeavours to ascertain the true amount of the compensation to be paid for the enfranchisement. *E.g.*, the lord may say that the timber is his; and the tenant may maintain (and often successfully) that the timber is his; or there may be some question, arising upon a special custom, as to the fines (when arbitrary),—the question being, *e.g.*, as to whether the enfranchising tenant (as being an heir or as being a copyholder already) is not entitled to be exempted from the payment of all but a nominal fine on his admittance; or the question may be wholly one of law, namely, whether a certain unpaid fine payable in respect of the last admittance (and which by sect. 3, sub-sect. 3, must be paid by the tenant before he can give notice demanding enfranchisement) is or is not barred by the statute of limitations,—so as (within sect. 95, sub-clause c) not to be payable at all, and the payment of which therefore is not a condition precedent to giving notice to enfranchise.

In the case of any such dispute arising, either party to the compulsory enfranchisement may, by writing addressed to the other party, require the matter in dispute to be referred to the Board of Agriculture; and the decision of the board is (by this section) declared to be final,—that is to say, final as regards the question of *fact* that was in dispute, and final (subject to the appeal nextly provided for) as regards also the question of *law* that may have been raised.

And for the purposes of determining any matter in dispute that shall have been referred to them as aforesaid

upon the requisition of either party as aforesaid, the board may exercise all the powers given to it, by sect. 54 of the act and otherwise by the act. S. 53 (2).

(2.) Either party may appeal to the High Court, by way of special case, from a decision of the board on a matter of law, subject to the following provisions, that is to say :—

- (a) an application to state a case must be made to the board within twenty-eight days after the decision appealed from :
- (b) the person applying for the case must give to the other party to the inquiry not less than fourteen days' previous notice in writing of the intended application :
- (c) the case shall, if the parties differ, be settled by the board :
- (d) the judgment of the court on a special case shall be final and binding on the parties and on the board.

If the question determined by the board is one of *law*,—which would include the wrongful admission or rejection of evidence, as well as other questions which are more clearly questions of law,—

The party dissatisfied with the decision of the board, may appeal to the High Court,—

The appeal being by *special case* (and therefore to a divisional court),—

And the board must, within twenty-eight days (extendible) from the date of their decision, be asked by the party desirous of appealing to state such special case,—he having first given to the other party fourteen days' notice in writing of his intention in that behalf : and the desiring appellant will proceed forthwith to prepare the draft special case, and will submit it to the other party for his

S. 54. perusal and approval: and the board will itself finally settle the case, where the parties fail to agree as to any of the statements which either of them insists on having inserted therein.

The decision of the divisional court is final and without appeal,—as between the parties thereto; and it is also binding on the board.

Power to
call for
produc-
tion of
documents
and ex-
amine
witnesses.

54.—(1.) The Board of Agriculture, or a valuer, may, for the purposes of this act, by summons under the seal of the board—

(a) call for the production, at such time and place as the board appoint, of any court rolls or copies of court roll, or any books, deeds, plans, documents, or writings, relating to any matter before them, in the possession or power of any lord or tenant or steward; and

(b) summon to attend as witnesses any lord or tenant or other person.

(2.) The board or a valuer may examine any witness on oath, and may administer the oath necessary for that purpose.

By this section, the valuers (or the umpire) for the purposes of any inquiry proceeding before them and for the purposes of any valuation they are required to make, are invested with all the powers of a court of justice,—as to calling for the production of documents, and as to summoning and examining witnesses. And the Board of Agriculture is invested with all the like powers, for any of the purposes aforesaid or for any other the purposes of the act.

Failing compliance with the requisition of the valuers (or umpire) or of the board,—the due proceeding must be taken by one or other of the parties to enforce compliance,

that is to say,—whenever the penalty, appointed by subsect. 4 for non-compliance, proves insufficient to secure compliance. S. 54 (8).

(3.) A lord or tenant summoned under this section shall not be bound to answer any question as to his title.

The goodness or badness of the lord's title,—and whether it is subject to or not subject to incumbrances,—are, in general, matters of the supremest indifference to the enfranchising tenant,—these being matters which do not affect or in any manner prejudice the title accruing under the enfranchisement award (or under the enfranchisement deed).

The goodness or badness of the enfranchising tenant's title, and whether it is subject or not subject to any incumbrance,—is also, in general, a matter of absolute unconcern to the lord,—and is of concern to the enfranchising tenant only, to whom it is a matter sometimes of very serious concern.

The title being therefore,—as regards the enfranchisement,—a matter of no consequence in the general case,—the parties are by this sub-section exempted from the duty of answering any question regarding it; also, it would be wholly out of place, upon an enfranchisement, to put any such question; for the question could only have for its object the casting some doubt or slur upon the title, which would be for the benefit of neither party.

But upon a compulsory enfranchisement (at the instance of the lord), the board may (by sect. 51, sub-sect. 3) require the lord to make a statutory declaration of his title, if the enfranchising tenant should require one. And upon a voluntary enfranchisement (and indeed upon every enfranchisement), the information which is to be furnished to the board by the steward in filling in the form headed "*Information to be furnished, &c.*" (Form No. 24, in Appendix), supplies all the knowledge as to title which the enfranchisement proceedings require.

S. 55.

(4.) If any person summoned under this section, to whom a reasonable sum has been paid or tendered for his expenses, without lawful excuse neglects or refuses to attend, or to give evidence, or to produce a document in pursuance of the summons, he shall be liable on summary conviction to a fine not exceeding five pounds.

The penalty of 5*l.*, appointed by this section for non-compliance with the requisitions of the valuers (or umpire) or the board, as to discovery and as to attending and giving evidence as a witness, may (and usually will) secure compliance. But if not, then compliance will be enforced by writ of attachment issuing out of the High Court.

(5.) If any person wilfully gives false evidence in any proceeding under this act, he shall be guilty of perjury.

Evidence given on oath before the valuers (or umpire) or before the board,—although they are not courts of justice,—is required to be truthful according to the tenor of the oath taken; and therefore false evidence so given is (by this sub-section) declared to be perjury.

(6.) If any person wilfully destroys or alters any document of which the production is required under this section, he shall be guilty of a misdemeanor.

The wilful destruction of any document comprised in the requisition of the valuers (or umpire) or of the board, —or its alteration in any particular,—is a misdemeanor.

Expenses
of in-
quiries
before
board.

55. The Board of Agriculture may, if they think fit, order that the expenses of any inquiry

by the board under this act, including the expenses of witnesses and of the production of documents, be paid by the parties to the inquiry, and to such person, and in such proportions, as the board think proper.

S. 56.

The expenses of any proceedings before the valuers (or umpire) are portion of the expenses of the enfranchisement (sect. 34, sub-sect. 4), and are therefore payable as such by the party requiring the enfranchisement (sect. 34, sub-sect. 1),—the Board of Agriculture first certifying as regards any expenses that they have been properly incurred (sect. 34, sub-sects. 2, 5); and it is, of course, only in the case of a compulsory enfranchisement, that valuers (or an umpire) come into the proceedings.

The expenses of any inquiry before the board itself (being of such special character as is referred to in sect. 53, *supra*, and in the notes thereto) are properly left, by this section, in the discretion of the board; and the board will also (under sect. 34) tax and allow such expenses, and make the due order as to their payment.

56.—(1.) Where, in the course of an enfranchisement under this act, it is found that a manor, or the lord's estate and interest in any land belonging thereto, which may be the subject of enfranchisement, is subject to the payment of a fee-farm rent or to any other charge, the Board of Agriculture may, on the application of the person for the time being bound to make the payment or defray the charge, by order under their seal, direct that the rent or charge shall be a charge on any freehold land specified in the order of adequate value and held under the same title as the manor or land respectively, or on an adequate

Power to transfer charges on manor to other land or stock.

8. 58
(2) (3).

amount of government stocks or funds to be transferred into court by the direction of the board or into the names of trustees appointed by the board.

By this section, a *fee-farm rent* attaching to the manor (or to any land which is part of the manor and which is in the course of being enfranchised) may, on the application of the lord, be shifted off the manor (or shifted off the land aforesaid), on to other freehold land of the lord (settled to the same uses),—or on to some substituted personal security consisting of government stocks or funds.

And “*any other charge*” (that is to say, *semble*, of the like nature with such fee-farm rent) attaching to the manor (or to any land belonging thereto and which is in the course of being enfranchised) may, on the application of the lord or (as the case may be) of the tenant liable to pay the charge, be in like manner shifted off, and such other like security for the charge substituted.

(2.) From and after the sealing of the order, the manor and land shall be discharged from the rent or charge, and the rent or charge shall be a charge on the land or the funds specified in that behalf in the order.

(3.) There shall, by virtue of this act, be attached, so far as the nature of the case will admit, to every charge under this section, the like remedies, as against the land or funds made subject thereto, for the recovery of the amount charged, as might have been had as against the manor or land in respect of the original charge.

The shifting off and substitution are effected by an order of the Board of Agriculture: and are effected

immediately upon the sealing of that order with the seal of the board: and the substituted security has, as incident thereto, all the like remedies, *mutatis mutandis*, as the original security had.

S. 57.

Notices, Instruments, and Forms.

57.—(1.) A notice, required or authorised by this act to be given to any person, must be given in writing, and may be given—

Notices.

- (a) by leaving it at his usual or last known place of abode or business in the United Kingdom; or
- (b) by sending it by post in a registered letter addressed to him at that place; or
- (c) where he is a tenant of any premises, by delivering the notice or a true copy of it to some person on the premises, or if there is no person on the premises to whom it can be delivered with reasonable diligence, by fixing it on some conspicuous part of the premises.

Every notice under the act is to be in writing; and it is to be given, in general, like a writ of summons is served,—excepting that, if sent by post in a registered addressed envelope (a form sometimes available for the service of a writ of summons), it shall be deemed well given.

(2.) Where a notice is required by this act to be given by the Board of Agriculture or a valuer and no other mode of giving the notice is directed, the notice may be either in the name of the board or valuer, as the case may be, or on their behalf

S. 58. respectively in the name of any person authorised by the board to give notices.

A notice required by the act to be given by the board will usually be a notice by the board (*i.e.*, in the name of the board).

And a notice required by the act to be given by a valuer will usually be a notice by the valuer (*i.e.*, in the name of the valuer).

Stamp
duty.

58.—(1.) An agreement, valuation, or power of attorney under this act shall not be chargeable with stamp duty.

(2.) An enfranchisement award shall be chargeable with the like stamp duty as is chargeable in respect of an enfranchisement deed.

(3.) A certificate of charge under this act and a transfer thereof shall be chargeable with the like stamp duty as is chargeable in respect of a mortgage and a transfer of a mortgage respectively.

The enfranchisement award being in the nature of a purchase deed,—as the enfranchisement deed manifestly is,—the due *ad valorem* stamp on the enfranchisement consideration as upon purchase money will be affixed thereto; but the other proceedings (*i.e.*, valuations and the like) which are merely preliminaries leading up to the enfranchisement, ought properly to go free of stamps, and are accordingly exempted.

A certificate of charge, being in effect (and having all the incidents of) a mortgage deed, the due *ad valorem* mortgage stamp will be affixed thereto; and a transfer of the charge (or of the certificate of charge), being in effect (and having all the incidents of) a transfer of the mortgage debt, and of the security therefor, the due *ad valorem* transfer of mortgage stamp will be affixed thereto.

59. The Board of Agriculture may require the payment of all office fees and other expenses of the board from either lord or tenant requesting the delivery of any award, deed, or order under this act, before delivering it.

Ss. 59, 60.

Payment
of office
fees.

The effect of this section is,—to give the board a lien for the fees and expenses of the board upon the enfranchisement award (or enfranchisement deed),—as against either party (lord or tenant) requesting its delivery. And the section gives the board the like lien upon any order of the board made under the act.

60.—(1.) The Board of Agriculture may at any time if they think fit, on the application of any person interested in an award or deed of enfranchisement or charge or other instrument made or issued or having effect under the provisions of this act, correct or supply any error or omission arising from inadvertence in that instrument.

Power for
board to
correct
errors in
instru-
ments.

(2.) Before making an alteration under this section, the board shall give such notice as they think proper to the persons affected by the alteration.

(3.) An alteration shall not be made in an instrument relating to a voluntary enfranchisement without the consent in writing of the persons affected by the alteration.

(4.) The expenses of and incidental to an application under this section shall be paid by the persons interested in the application or some of them if and as the board direct.

An error or omission arising from inadvertence (that is to say, any mere slip),—occurring in an enfranchisement award,—or in an enfranchisement deed,—or in any

S. 61.

certificate of charge,—or, in fact, in any other instrument made or issued under the act, or depending upon the act for its effect or acquiring effect under the provisions of the act,—may be corrected by the board, and that at any time,—and on the application of any party interested,—due notice being first given by the board of the proposed correction to any one who will be affected thereby,—

The board having, however, a discretion in every case to refuse the application,—and being (in the case of a voluntary enfranchisement) wholly unable to make the proposed correction, save with the consent in writing of all the persons who will be affected thereby. And, in general, the applicant will be ordered by the board to pay the costs of the application; but the board has a discretion as to this also.

Execution of enfranchisement instrument to be conclusive of regularity of proceedings.

61.—(1.) The confirmation under the seal of the Board of Agriculture of an award of enfranchisement, and the execution by the board of a deed of enfranchisement respectively, shall be conclusive evidence of compliance with all the requirements of this act with respect to proceedings to be taken before the confirmation or execution.

The enfranchisement award (in the case of compulsory enfranchisements) and the enfranchisement deed (in the case of voluntary enfranchisements), being first confirmed respectively by the board,—are conclusive that every requisite of the act has been complied with: *omnia rite esse acta*: and the evidence of this, is the official seal of the board affixed,—to the enfranchisement award or (as the case may be) to the enfranchisement deed,—in testimony of the enfranchisement award having been confirmed, or (as the case may be) of the enfranchisement deed having been executed, by the board.

(2.) An award or deed of enfranchisement shall not be impeached by reason of any omission,

mistake, or informality therein or in any proceeding relating thereto, or of any want of any notice or consent required by this act, or of any defect or omission in any previous proceedings in the matter of the enfranchisement.

S. 62.

Consequently, any (if there should have been any) informality in the proceedings preliminary to the seal of the board being affixed to the enfranchisement award or (as the case may be) to the enfranchisement deed,—is wholly waived,—or otherwise is cured and purged; and the award or deed is not impeachable, either at law or in equity; but any slip therein may (under sect. 60) be, of course, corrected.

62.—(1.) Any person interested in any land enfranchised under this act may at any time inspect and obtain copies of the court rolls of the manor of which the land was held on payment of a reasonable sum for the inspection or copies.

Inspection
of court
rolls after
enfran-
chisement

(2.) The Board of Agriculture may, if they think fit, fix a scale of fees to be paid to the steward or person having custody of the court rolls for the inspection and for making extracts or copies.

An enfranchisement (whether voluntary or compulsory), when it is effected under the act, enures according to the old copyhold title; and in support and defence of that title (so far as it was vested in him before the enfranchisement), the enfranchising tenant (or other the owner deriving title under him to the enfranchised tenement) may well have occasion to consult the court rolls,—to meet and defeat any title to the copyhold that may afterwards be put forward adversely to his own original copyhold title; and for that purpose (or for any other legitimate purpose), he is therefore entitled to have

S. 63.

inspection of, and copies or extracts made from, the court rolls,—paying therefor the reasonable fees for such inspection, and the reasonable fees and charges for copies or extracts.

Also, in proof of his continuing right of common (or other continuing right) which was annexed to the tenement before the enfranchisement thereof, the enfranchising tenant (or other the owner of the enfranchised tenement) may require inspection of the court rolls,—for these rolls contain, in general, evidence of this right of common (or other continuing right), mixed up with the entries therein of surrenders and admissions.

Evidence
from in-
struments
under
repealed
acts.

4 & 5 Vict.
c. 35.

63.—(1.) Any person interested in any land included in any enfranchisement or commutation made by apportionment under the Copyhold Act, 1841, may inspect and obtain copies of or extracts from any instrument relating to the enfranchisement or commutation deposited with a clerk of the peace or steward of a manor under that act.

(2.) A person requiring under this section inspection of or a copy of or extract from any instrument shall give reasonable notice to the person having the custody of the instrument, and shall pay to him for every inspection a fee of two shillings and sixpence, and for every copy and extract a fee at the rate of twopence for every seventy-two words in the copy or extract.

Where six (formerly twelve) tenants of the manor chose to agree with the lord for an enfranchisement of their tenements, the enfranchisement might be effected by a schedule of apportionment specifically agreed upon between such tenants and the lord,—or (failing their agreement) by a schedule of apportionment prepared by the steward and confirmed by the Copyhold Commissioners

(Copyhold Act, 1841, s. 56); and in every such case, the lord's title was investigated (Act 1841, s. 58); and all such enfranchisements were, of course, voluntary. The present act has repealed all the provisions of the earlier copyhold acts relative to these enfranchisements by apportionment schedule, and (save as is re-enacted in this present section) has not re-enacted any of them. S. 63 (2).

Commutations also,—which might have been effected under the earlier Copyhold Acts,—are left unprovided for by the present act,—but up to the 2nd August, 1858, general commutations might have been effected under the Copyhold Act, 1841, that is to say, commutations of all the copyhold tenements of the manor; and up to the 25th August, 1894 (the date of the coming into operation of the present act), private or particular commutations might also have been effected, under the earlier Copyhold Acts, that is to say, commutations affecting only some one copyholder's tenement or tenements, and not operating to affect the tenements of the other copyhold tenants; and every such commutation, whether general or particular, was, of course, voluntary,—and not compulsory. And the due agreement having been first entered into, the commutation was effected under and subject to the control of the Copyhold Commissioners. And, firstly, if the proposed commutation was a general commutation,—it was effected by means of a schedule of apportionment prepared by the Copyhold Commissioners or else prepared by the steward and confirmed by these commissioners (Act 1841, s. 31); but secondly, if the proposed commutation was merely a private or particular commutation, it was effected either by a deed of release and extinguishment from the lord duly entered on the court rolls or by the mere entry on such rolls of the agreement itself for the commutation (Act 1841, s. 52). And in either case, a supplemental commutation might afterwards have been effected, for the purpose of including (and discharging, *i.e.*, commuting) any manorial incident left uncommuted (Act 1841, s. 54). (*Vide supra*, pp. 133—141.)

S. 63 (3). Wherever an enfranchisement or a commutation was so effected as aforesaid, by means of a schedule of apportionment, one copy of such schedule (under the seal of the Copyhold Commissioners and with the incidental documents annexed thereto) was deposited with the steward of the manor, to be kept by him with the court rolls; and another like copy was deposited with the clerk of the peace for the county within which the manor (or the greater part of it) was situate, to be kept by him with the papers and books of the clerk of the peace for the time being (Act 1841, ss. 33, 56). And it is the documents so deposited that are referred to in these two sub-sections of this present section.

(3.) Every recital or statement in, or agreement, schedule, map, plan, document, or writing annexed to, a confirmed apportionment made under the said act, shall be sufficient evidence of the matters recited or stated, and of the accuracy of the map or plan respectively.

The divers matters recited or stated in,—or appearing by any plan or document in writing annexed to,—the apportionment schedule so deposited as aforesaid, would comprise (among other matters of interest to the owner of the enfranchised or commuted tenement) the following matters, that is to say:—

- (1) The title to the tenement;
- (2) The identity thereof,—or its boundaries and abutments;
- (3) The acreage thereof;
- (4) The manorial incidents (if any) to which the tenement remains subject;
- (5) The tenure by which the tenement is held, and the incidents subject to which it continues to be holden; and
- (6) The question whether or not the mines and minerals within or under the tenement have been comprised

in the enfranchisement or commutation,—as of course they may have been. S. 64.

And in proof of any of these matters, the party interested in the tenement may, under sub-sect. 1, have inspection of the deposited schedule (and of the plans and documents annexed thereto) and may have copies thereof or extracts therefrom made,—first giving the notice and making the payments in that behalf appointed by sub-sect. 2; and the copy or extract, being duly certified, will be admissible in evidence,—subject possibly to the court's first dispensing with the production of the original schedule itself (Judicature Act, 1894, s. 3).

64.—(1.) When all the lands held of a manor have been enfranchised, the lord, or (with the consent of the lord) any person having custody of the court rolls and records of the manor, may hand over all or any of the court rolls and records to the Board of Agriculture or to the Master of the Rolls.

Custody
of court
rolls after
enfranchisement.

When all the lands held of a manor have been enfranchised, the future emoluments of the steward as such will of course be very considerably reduced; and the lord may experience a difficulty in obtaining any gentleman of learning and probity to act as (or to continue acting as) his steward of the manor; and in that case, he may desire to get rid of the custody of the court rolls and manorial records,—by handing them over (or allowing his steward or other their custodian to hand them over) to the Board of Agriculture or to the Master of the Rolls, under this sub-section.

But if disposed to do so, he must first satisfy himself, that all the lands held of the manor have been enfranchised; and this raises the question, whether lands, the manorial incidents (or some only of the manorial incidents) originally attaching to which have been commuted, can be

S. 64
(2) (3).

enfranchised after having been commuted, or are (within the meaning of this section) to be deemed to have been enfranchised by having been commuted,—a question not very easy of solution.

And apart from that question, the lord may be well advised in retaining the custody of his court rolls and records,—they being (in many particulars) evidences of his own title as lord, and (while they remain in his own custody) being accessible to him without fee and without trouble.

And the practice might also conveniently arise of entering on the court rolls (as upon a register of title) all dealings with the enfranchised tenement subsequent to the enfranchisement thereof, whereby the lord's right of escheat, when that right should happen, would be maintained, and the proof of it made more easy.

And there are other reasons possibly, which ought to induce lords to retain the custody of their court rolls.

(2.) Where any court rolls or other records are in the custody of the Board of Agriculture, the board may hand over all or any of them to the Master of the Rolls.

The board is, of course, different from the lord,—as regards all the matters referred to in the notes to the first sub-section of this section; and there is therefore no reason why the board should keep,—and there is every reason why the board should hand over to the Master of the Rolls,—all court rolls and court records that may have been handed over to them

(3.) Any person interested in any enfranchised land may inspect and obtain copies of and extracts from any court rolls or records in the custody of the board, or of the Master of the Rolls, relating

to the manor of which that land was held or was parcel, on payment of such reasonable fees as are fixed from time to time by the board or the Master of the Rolls respectively.

S. 64

(4) (5).

The phrase "enfranchised land" as again here used, may possibly extend to land which has been "commuted"; and certainly, the person interested in commuted land has as much occasion as (and in general more occasion than) the owner of an enfranchised tenement, to inspect the court rolls and court records, and to obtain copies thereof or extracts therefrom.

And doubtless his right will be recognised by the board or (as the case may be) by the Master of the Rolls,—assuming that the court rolls have been handed over to their custody; for they are respectively only entitled to that custody, on the assumption that all the tenements held of the manor have been "enfranchised," and would therefore (so far as regards this purpose) be estopped most probably from disputing that a commuted was not an enfranchised tenement.

(4.) The Master of the Rolls may undertake the custody of court rolls and records handed over to him under this section, and may make rules respecting the manner in which, and the time at which, inspection may be made and copies and extracts may be obtained of and from the court rolls and records in his custody, and as to the amount and mode of payment of the fees for the inspection, copies, and extracts respectively.

(5.) Every rule made under this section shall be laid, as soon as may be, before both Houses of Parliament.

The Master of the Rolls is, by this section, *enabled* to accept the custody of the court rolls and court records of

Ss. 65, 66. manors, which (without such enabling power) he could not otherwise have done.

And he is also hereby enabled to make rules, relative to the inspection of the court rolls and court records in question, and relative to the furnishing of copies thereof or of extracts therefrom, and relative to the fees payable for the inspection or for the copies and extracts.

But such rules are clearly within the Rules Publication Act, 1893, and the forty days' notice appointed by that act must therefore be first given before the rules are made, for they are statutory rules which (by sub-sect. 5 of this section) are "*directed to be laid before parliament*"; and they are, of course, "*rules made in pursuance of an act of parliament*,"—*scilicet*, the Copyhold Act, 1894; and they are also "*statutory rules*" within the definition thereof contained in sect. 4 of the Rules Publication Act.

Board to
frame and
circulate
forms.

65. The Board of Agriculture shall frame, and cause to be printed, forms of notices and agreements and such other instruments as in their judgment will further the purposes of this act, and shall supply any such form to any person who requires it, or to whom the board think fit to send it, for the use of any lord or tenant desirous of putting this act into execution.

A copy of the forms here referred to is contained in the Appendix hereto.

Board to
publish a
scale of
compen-
sation.

66.—(1.) The Board of Agriculture shall frame, and cause to be printed and published—

(a) such a scale of compensation for the enfranchisement of land from the several rights and incidents, including heriots, specified or referred to in this act, as in their judgment

will be fair and just and will facilitate enfranchisement, together with such directions for the lord, tenant, and valuers as the board think necessary; and

(b) a scale of allowance to valuers for their services in the execution of this act.

(2.) The board may vary any such scale.

(3.) The scales published by the board under this section shall be for guidance only, and shall not be binding as a matter of law in any particular case.

(4.) The person requiring an enfranchisement shall state to the other party to the enfranchisement, whether he is or is not willing to adopt the scale of compensation published by the board.

The “*scale of compensation*,” and the “*scale of allowance*,” here referred to, are contained in the Appendix hereto, Official Forms, Nos. 26, 27.

These scales are for guidance only—but they are in general use—being commonly accepted by the parties and by the valuers,—and that as regards both compulsory and voluntary enfranchisements.

The party to a compulsory enfranchisement, who is the compelling party, must inform the other party, if he is willing to be bound by the “*scale of compensation*”; and if he is not willing to be bound by that scale, he must also say so.

Legal Proceedings.

67. An order or proceeding under this act by, or before, or under the authority of, the Board of Agriculture, or a conviction under this act, shall not be quashed for want of form, and shall

S. 67.

Proceed-
ings under
act not to
be quashed
for want
of form

S. 68. not be removed by certiorari or otherwise into the High Court or any other court.

nor re-
moved by
certiorari.

The High Court (King's Bench Division) having a general jurisdiction over all inferior tribunals, and also over all non-judicial bodies which assume to discharge judicial or quasi-judicial functions, it was necessary, by this section, to provide (if it was desired to provide)—

- (1) That the orders of the board (as to the proceedings of the board) should not be quashed for want of form, or removed by certiorari or otherwise into the High Court (or into any other court); and
- (2) That any conviction under the act (*e.g.*, on account of any offence under sect. 54 of the act) should not be quashed for want of form, or removed by certiorari or otherwise into the High Court (or into any other court).

But the provisions of this section in no way affect, *e.g.*, the right of appeal given by sect. 53 of the act.

PART VI.—APPLICATION OF ACT TO SPECIAL MANORS.

Proceed-
ings for
determin-
ing com-
pensation
in certain
enfran-
chise-
ments of
Crown
lands.

68.—(1.) Where a manor is vested in her Majesty in right of the Crown or of the duchy of Lancaster, either in possession or in remainder expectant on an estate less than an estate of inheritance, and either solely or in co-parcenary with a subject, and the Commissioners of Woods or the chancellor and council of the duchy of Lancaster in exercise of the powers vested in them enter into negotiations for the enfranchisement of any land held of the manor, and cannot agree with the tenant as to the amount of the consideration money to be paid by him for the

enfranchisement to the commissioners or to the receiver-general of the duchy of Lancaster as the case may be, the commissioners or the chancellor and council, as the case may be, may, if they think fit, on the request of the tenant, and on an agreement for the enfranchisement being entered into by them and the tenant respectively, refer it to the Board of Agriculture to appoint a surveyor to determine the said amount.

‘S. 68
(2) (3).

(2.) The Board of Agriculture shall on a reference being made under this section appoint a practical land surveyor for the purposes of the reference, and his award shall be final.

(3.) The expenses of and incidental to a reference under this section shall be treated as expenses on a compulsory enfranchisement at the instance of the tenant.

Firstly, as regards the duchy of Cornwall (or, *semble*, any of the *private* estates of the crown), the Copyhold Act, 1894, has no application (sect. 95, sub-clause (g)).

Secondly, as regards the duchy of Lancaster, the provisions of the act with reference to *compulsory* enfranchisements do not apply at all (sect. 96, sub-clause (b)); and, in fact, none of the provisions of the act apply, except so far as they are, in and by the act itself, expressed to be made applicable (sect. 95, sub-clause (f)); and the only sections which are so expressed to be made applicable are this present section (sect. 68), and the sections which, by sect. 98, are made applicable, namely:—sects. 24, 82—85, and 87,—sect. 24 relating to the grant of enlarged mining rights, and ss. 82—85 and 87 having reference only to the general law of copyholds (being and remaining copyholds), and in no way relating to enfranchisements.

S. 68 3). This present 68th section (with sect. 24 as incidental thereto) is, therefore, the only section of the act which deals with enfranchisements within the duchy of Lancaster; and it provides for the following cases, namely:—

- (1.) Where the duchy is sole lord, and entitled either—
 - (a) In possession; or
 - (b) In remainder expectant on a life estate (or expectant on any other estate less than a fee tail or fee simple estate); and
- (2.) Where the duchy is one only of several lords entitled in co-parcenary, and the duchy's title (in such case) is either—
 - (a) In possession; or
 - (b) In remainder expectant as aforesaid.

And the section assumes that the duchy and the tenant holding of the duchy have entered into an agreement for the enfranchisement,—the duchy acting, of course, through the chancellor and council of the duchy; and in such a case, if the enfranchisement consideration payable (*scil.*, to the receiver-general of the duchy) is not agreed between the tenant on the one hand and the chancellor and council on the other hand, the chancellor and council may (on the request and at the cost of the tenant) refer it—but are not obliged to refer it,—to the Board of Agriculture, to appoint a surveyor to determine the amount of the enfranchisement consideration (*scil.*, the enfranchisement consideration payable to the duchy).

And the appointment of surveyor being (if it should be) so referred to the board,—the board will, in due course, appoint a surveyor to ascertain the amount; and the surveyor will, in due course, make his award determining the amount; and his award is final; and all the expenses of the reference and award (and of the incidental proceedings) are in every case paid by the tenant.

Enfranchisements of lands held of the duchy of Lancaster are negotiated and (in general) completed, under the provisions in that behalf contained in the 19 Geo. III. c. 45, as amended by the 27 Geo. III. c. 34, and some few

subsequent acts,—the 9th section of the 19 Geo. III. c. 45 enabling tenants for life to enter into the enfranchisement agreement, and the 6th section (which is the general enabling cause) providing as follows:—

S. 68 (3).

“That it shall and may be lawful to and for the said chancellor and council to treat and contract on the part of his Majesty, his heirs and successors, with any person or persons,—holding any messuages, lands, tenements, and hereditaments by copy of court roll, or being of the nature of copyhold or of customary tenure, or for which any fine is payable to his Majesty, his heirs or successors, on descent or alienation, which are within and parcel of any of the honours, manors, or lordships of the said duchy of Lancaster,—for the enfranchisement thereof and for discharging the same (and all and every the present and future owners and tenants thereof and their heirs) from the payment of all customary fines, fines of ingress and other fines, heriots, reliefs, quit rents, and other dues and payments to which, by the respective customs of such honours, manors, or lordships, they are now or would hereafter otherwise be subject and liable, at and for such prices and considerations in money to be paid for the same, and upon such terms and conditions, as shall be agreed upon by and between the said chancellor and council and the person or persons holding such messuages, lands, tenements, and hereditaments; and thereupon to convey and assure such respective messuages, lands, tenements, and hereditaments in the name of the King's Majesty, his heirs and successors, under the seal of the said duchy, to such person or persons and their heirs respectively, to be holden to such person or persons and their heirs respectively for ever, *as of the honour or manor whereof they are parcel*, in free and common socage, freed and discharged from all fines, heriots, reliefs, quit rents, and other customary dues and payments and suits and services whatsoever.” And the section proceeds to give also (and to set forth) the form of the conveyance to be used upon such an enfranchisement.

S. 68 (3). Thirdly, as regards the crown as such (that is to say, manors belonging to the crown as such, *i.e.*, public crown lands),—the provisions of the act with reference to *compulsory* enfranchisements do not apply at all (sect. 96, sub-clause (b)); and in fact none of the provisions of the act apply, except so far as they are in and by the act itself expressed to be made applicable (sect. 95, sub-clause (f)); and the only sections which are so expressed to be made applicable are sects. 68, 69, 70, and 71, and the sections which (by sect. 98) are made applicable, namely:—sects. 24, 82—85, and 87,—sect. 24 relating to the grant of enlarged mining rights, and sects. 82—85 and 87 having reference only to the general law of copyholds (being and remaining copyholds), and in no way relating to enfranchisements.

The 68th, 69th, 70th, and 71st sections of the act (with sect. 24 as incidental thereto) are therefore the only sections of the act which deal with enfranchisements within manors vested in the crown as such (*i.e.*, with enfranchisements within manors forming portion of the public crown lands): and these sections provide as follows:—

Sect. 68 applying where the crown is sole lord and entitled in possession or in remainder expectant on a life estate (or on any other estate which is less than a fee tail or fee simple estate); and applying also when the crown is only one of several lords entitled as co-parceners [or, *semble*, as joint-tenants (sect. 70)] in possession or in remainder expectant as aforesaid [or, *semble*, in reversion expectant as aforesaid (sect. 70)]: and sect. 69 applying where the crown is sole lord, but is entitled only in remainder or in reversion,—and the remainder or reversion is expectant on an estate of inheritance (in fee tail or in fee simple).

And firstly, when the enfranchisement is within sect. 68—the section (it will be observed) assumes, that the crown and the tenant holding of the crown have entered into an agreement for the enfranchisement,—the crown acting, of course, through the Commissioners of Woods; and in such

a case, if the enfranchisement consideration payable (*scil.*, to the Commissioners of Woods) is not agreed between the tenant on the one hand and those commissioners on the other hand, the commissioners may (on the request and at the cost of the tenant) refer it,—but are not obliged to refer it,—to the Board of Agriculture, to appoint a surveyor to determine the amount of the enfranchisement consideration (*scil.*, the enfranchisement consideration payable to the commissioners).

S. 68 (3).

And the appointment of surveyor being (if it should be) so referred to the board,—the board will in due course appoint a surveyor to ascertain the amount; and the surveyor will in due course make his award determining the amount; and his award is final; and all the expenses of the reference and award (and of the incidental proceedings) are in every case paid by the tenant.

Enfranchisements of lands held of the crown as such have been negotiated and (in general) completed, under the provisions in that behalf contained in the 10 Geo. IV. c. 50, as amended by certain subsequent acts (that act with the amending acts cited in the footnote (r) being commonly cited as the Crown Lands Acts, 1829 to 1885); and the 41st section of the 10 Geo. IV. c. 50, enables tenants for life to enter into the enfranchisement agreement; and the 34th section (which is the general enabling clause) authorises and empowers the commissioners (subject to the control of the Treasury (sect. 60)), to contract for the sale of, and to sell, “*for such sum of money as to the commissioners shall appear a sufficient consideration for the same,*” any part or parts of (in effect) any of “the possessions and land revenues of the crown” (as that phrase is used in sect. 8 of the act),—sect. 35 enabling the commissioners to convey to the purchaser the property so sold,

(r) 2 & 3 Will. 4, c. 1; 5 Vict. c. 1; 8 & 9 Vict. c. 99; 14 & 15 Vict. c. 42; 15 & 16 Vict. c. 62; 16 & 17 Vict. c. 56; 29 & 30 Vict. c. 62; 36 & 37 Vict. c. 36; and 48 & 49 Vict. c. 79; together with (for Scotland) 2 & 3 Will. 4, c. 112; 3 & 4 Will. 4, c. 69; and 5 & 6 Will. 4, c. 68.

S. 69. in the form of conveyance given in the schedule to the act,—or in any form to the like effect,—which conveyance (the section enacts) “*shall be valid and sufficient*, to pass all the estate, right, and interest of his Majesty, his heirs or successors, in and to the part or parts of the said possessions and land revenues of the crown to which the same shall relate, to the person or persons, or body or bodies politic, corporate, or collegiate, therein named as the grantee or grantees, for such estate or estates, to such uses, and upon and for such trusts, intents, and purposes (if any) as shall, in and by such conveyance, or by reference therein to any other instrument or instruments or deed or deeds, be expressed or declared of or concerning the same.” And the subsequent provisions of the Crown Lands Act, 1829, and in particular the provisions contained in sect. 69 of that act, make it abundantly clear, that the words “*sell*” and “*convey*” in sect. 34 of the act are intended to include and comprise the word “*enfranchise*,”—sect. 69 enacting that “*whenever under the powers of sale hereinbefore (i.e., by sect. 34) given, the freehold of any copyhold or customary tenement, parcel of or holden of any manor belonging to the crown, shall be sold by the Commissioners of his Majesty’s Woods, Forests, and Inland Revenues for the purpose of enfranchising such copyhold or customary tenement, or any manorial rights parcel of any manor belonging to the crown shall be sold by the said commissioners, the deed or instrument by which such sale shall be effected shall not only be enrolled in the court rolls of the manor of or to which such copyhold or customary tenement or such manorial rights shall have been parcel or appurtenant by the steward of such manor or his lawful deputy,*”—and so forth.

Voluntary
enfranchisement
under act
in certain
crown
manors.

69.—(1.) Where a manor is vested in her Majesty in right of the crown in remainder or reversion expectant on an estate of inheritance,

the manor and any land held of the manor may, with the consent in writing of the Commissioners of Woods or one of them, be dealt with under the provisions of this act with respect to a voluntary enfranchisement, subject to the provisions of this section. S. 69 (1).

Secondly, when the enfranchisement is within sect. 69,—or when being under sect. 70 it is (so far as regards the crown) carried out under sect. 69,—as it may be: that is to say, either,—

- (1) When the crown as such is sole lord, and entitled as lord in remainder or reversion *expectant on an estate of inheritance*; or
- (2) When the crown is only one of several lords (entitled either as joint tenants or as coparceners), and either (a) in possession, or (b) in remainder or reversion (*expectant, scilicet, upon some estate less than an estate of inheritance*),—

then (and in either of such cases), upon the Commissioners of Works consenting in writing thereto,—the enfranchisement may (or, so far as regards the crown, it may) be carried out wholly under the provisions relative to voluntary enfranchisements contained in the Copyhold Act, 1894,—and irrespectively of the provisions of the Crown Lands Acts, which last-mentioned provisions are not very aptly expressed for the purposes of enfranchisements): that is to say,—

There will, first of all, be the agreement for enfranchisement (sect. 14), and the enfranchisement consideration may be either a gross sum, or a rentcharge, or any of the other considerations appointed by sect. 15; and ultimately the enfranchisement will be completed by an enfranchisement deed (sect. 16),—confirmed by the Board of Agriculture (sect. 20),—the proceedings which would be applicable in ordinary cases being, however, in crown cases made subject to the specific provisions following in this section,—

S. 69
(2)-(4).

(2.) Where the consideration for an enfranchisement under this section is a gross sum, it shall either be paid to two trustees to be appointed for the purpose,—one by the Commissioners of Woods or one of them, and one by the person for the time being entitled to the rents and profits of the manor,—or be paid into court to the account of ex parte her Majesty the Queen and the person so entitled as aforesaid.

That is to say,—

Firstly, the principal money (when the enfranchisement consideration assumes the form of a gross or lump sum) is payable as follows :—either

- (1) To two trustees,—one of them appointed on behalf of the crown, and the other of them by the private enfranchising lord ; or
- (2) Into court (Chancery Division), to an account entitled “ Ex parte the King and A. B. Esquire, Lords of the Manor of , in the County of .”

(3.) Money paid to trustees or into court under this section shall be applied,—

- (a) in the purchase or redemption of the land tax affecting the manor or any other land settled to the like uses as the manor ; or
- (b) in the purchase of land in fee simple convenient to be held with the manor ; or
- (c) in investing on government or real securities or in any of the investments in which trustees are for the time being authorised by law to invest.

(4.) The income of an investment under this section shall be paid to the person for the time

being entitled to the rents and profits of the manor. S. 69 (5).

Secondly, the gross sum, so paid to the trustees, or (as the case may be) so paid into court to the account aforesaid, is to be applied in one or other of the three modes specified in this sub-section, the crown and the private lord deriving therefrom (relatively to each other) all the same advantages as they would have derived from the enfranchised tenement, in case it had remained unenfranchised,—and neither of them (relatively to the other) deriving any greater advantage from this application of the enfranchisement consideration.

And, of course, the income arising from any investment of the enfranchisement consideration is payable to the party for the time being entitled to the rents and profits of the manor.

(5.) Where land is purchased with any consideration money under this section, or where the consideration consists of a rentcharge, the land or rentcharge shall be conveyed to the uses, on the trusts, and subject to the powers and provisions then affecting the manor, or as near thereto as circumstances permit.

Thirdly, if the enfranchisement consideration being a gross sum has been invested (under sub-sect. 3 of this section) in the purchase of fee simple land,—or if the enfranchisement consideration has assumed the form of a rentcharge (*scil.*, a perpetual rentcharge),—

The purchased land or (as the case may be) the enfranchisement rentcharge is to be limited to the uses to which the manor itself stands limited,—these limitations enuring, of course, for the private lord and for the crown respectively according to their respective estates and interests in the matter,—so that (relatively to each other) the

S. 69
(6)-(8).

private lord and the crown stand as they stood before the enfranchisement.

(6.) On the payment of the consideration where it is a gross sum of money, or on or before the execution of the conveyance of the rentcharge where the consideration is a rentcharge, the Commissioners of Woods or one of them may join with the person for the time being entitled to the rents and profits of the manor in executing a deed of enfranchisement.

(7.) The deed shall state in what manner the enfranchisement money, if any, has been applied.

In the case of an ordinary enfranchisement (*scil.*, in the case of a voluntary enfranchisement by a mere private lord),—the enfranchising tenant is (by sect. 17, subsect. 3) enabled to create the rentcharge by deed,—and until such rentcharge is so created, the enfranchised tenement remains charged therewith (sect. 19); but usually the deed granting the rentcharge will be executed simultaneously with the enfranchisement deed.

In the case of enfranchisements under this sixty-ninth section, that mode of proceeding will in general be adopted, that is to say, the deed creating the enfranchisement rentcharge will be executed simultaneously with the enfranchisement deed; and thereupon the crown (by the Commissioners of Woods) will also execute the enfranchisement deed. And note, that when the enfranchisement consideration is not such rentcharge as aforesaid, but is a gross sum, the enfranchisement deed is to state in what manner the principal sum has been applied.

(8.) The deed shall on the enrolment thereof being made in manner provided by this act, vest

in the tenant all the estate, right, and interest of her Majesty in right of the crown and of all other persons interested under the settlement of the manor in the land enfranchised,—either absolutely, or subject to the reservations, if any, contained in the deed. S. 69 (9).

The enfranchisement deed, even when executed by the crown, remains inoperative until it is enrolled; the enrolment is to be made as prescribed by the seventy-first section of this act; and upon such enrolment being made, the enfranchisement deed (a certificate of the enrolment thereof being first written thereon and duly signed) becomes fully operative,—vesting in the enfranchising tenant, for an estate in fee simple (or otherwise vesting in the persons entitled to the tenement before the enfranchisement thereof, for estates corresponding to their old estates therein) the whole title as well of the crown as of the private lord,—subject only to such (if any) reservations as may be contained in the enfranchisement deed.

(9.) A trustee appointed under this section by the Commissioners of Woods or one of them shall be indemnified by the commissioners, out of the rents and profits of the possessions and land revenues of the crown, from all costs and expenses, if any, which he incurs in the execution of the trust, and of which he does not obtain repayment out of the trust moneys.

This indemnity of the trustee would in any ordinary case be a matter of course; and the express provision thereof by this sub-section is merely in order to bind the crown to give or allow the same indemnity, that any private cestui que trust would be required to give.

Ss. 70, 71.

Enfranchisement
in manors
held in
joint
tenancy
with the
crown.

70. A manor vested in her Majesty in right of the crown in possession, remainder, or reversion, in joint tenancy or coparcenary with a subject, may, so far as regards the rights and interests of the subject and of the tenant, be dealt with under this act; and the provisions of this act relating to enfranchisements in manors vested in her Majesty in right of the crown, in remainder or reversion expectant on an estate of inheritance, shall apply so far as regards the share or interest of her Majesty.

So far as regards the rights of the private lord (co-tenant with the crown),—the provisions of the Copyhold Act, 1894, as well the compulsory as the voluntary provisions, are (by this section) made applicable to the enfranchisement; but, as a general rule, only the voluntary provisions will be resorted to.

And so far as regards the rights of the crown, the enfranchisement will be carried through in the manner provided by sect. 69, and explained in the notes thereto.

No private lord can, of course, be entitled (although the crown may be entitled) to a remainder or reversion *expectant on a fee simple estate*: and the remainder or reversion in this section referred to must therefore (being held in joint tenancy or coparcenary) necessarily be a remainder or reversion expectant on a life estate or on a fee-tail estate, or other such limited estate less than the fee simple.

Enrolment
of instru-
ments on
enfran-
chise-
ments in
crown
manors.

71.—(1.) The keeper of land revenue records and enrolments shall, for the purpose of preserving a record of enfranchisements under this act of land held of manors vested in her Majesty, provide a book in which shall be entered a memorial

of every deed of enfranchisement of any such land, and of every grant of a rentcharge on the enfranchisement, and of every conveyance of land purchased with the enfranchisement money.

S. 71
(2)-(4).

(2.) The memorial, where it is of a conveyance of land, shall be accompanied by a plan of the land.

(3.) The memorial of any instrument under this section shall be signed by one of the parties to the instrument.

(1.) The enfranchisement deed;

(2.) The deed granting the enfranchisement rentcharge;
and

(3.) The deed whereby the land purchased (when land is purchased) with the enfranchisement consideration when a gross or lump sum,—

All these three several deeds (or such of them as occur in the particular case, and two of them must almost necessarily occur in every case) are to be enrolled, that is to say, a memorial of each of them is to be enrolled, in the special book appointed by this section, the memorial being first signed by one of the parties to the deed; and (in the case of the purchase deed) the memorial is to have a plan of the land annexed thereto.

(4.) An instrument of which a memorial is required to be enrolled under this section shall not take effect until there has been written thereon a certificate signed by the keeper of land revenue records and enrolments, or by any person acting as his deputy or assistant, that a memorial thereof has been lodged at the office of land revenue records and enrolments.

Under sect. 69, sub-sect. 8, the enfranchisement deed

S. 71
(5)-(7).

in that sub-section referred to, becomes fully operative on the enrolment thereof.

Under this sub-section of sect. 71, the enfranchisement deed does not operate at all (as neither does the deed granting the enfranchisement rentcharge, nor the deed whereby the purchased land is conveyed), until there has been written thereon and duly signed a certificate to the effect that the appointed memorial thereof for registration has been duly lodged.

(5.) A certificate purporting to be signed by the keeper of land revenue records and enrolments, or by any person acting as his deputy or assistant, shall be admissible as evidence of the facts stated therein.

(6.) A copy of the enrolment of the memorial purporting to be signed and certified to be a true copy by the keeper of land revenue records and enrolments, or by any person acting as his deputy or assistant, shall be admissible as evidence of the deed or instrument or facts referred to in the memorial.

(7.) The treasury may direct what reasonable fees shall be paid in respect of an enrolment under this section, and fees paid for an enrolment shall be deemed to be expenses of the enfranchisement or purchase, as the case may be, in respect of which the enrolment is made.

The certificate written on the enfranchisement deed (or on either of the two other deeds specified in the notes to sub-sect. 4 of this section),—to the effect that a memorial has been lodged for enrolment,—proves the fact of such memorial having been so lodged (sub-sect. 5).

A certified copy of the enrolled memorial (whether of the enfranchisement deed or of either of the two other

deeds aforesaid) proves the deed itself, and also proves the facts referred to in the memorial (sub-sect. 6).

S. 72.

The fees on and for the enrolment of the enfranchisement deed (and of other the two deeds aforesaid) are (by sub-sect. 7) made portion of the expenses of the enfranchisement or (as the case may be) of the purchase,—

The enfranchisement deed here referred to being the enfranchisement deed provided for by sect. 69, sub-sect. 6; and the purchase deed here referred to being the purchase deed provided for by sect. 69, sub-sect. 5.

And as regards enfranchisement expenses (in the case of crown manors), the act makes no specific provision,—

Save so far as provision is made therefor by sub-sect. 3 of sect. 68 (which is limited to the special expenses therein referred to);

And save so far as provision is made therefor by sub-sect. 1 of sect. 69 (which introduces generally the provisions applicable to voluntary enfranchisements); but the enfranchisement being always voluntary, the enfranchisement agreement ought to specifically provide for all these crown enfranchisement expenses.

72.—(1.) An agreement for an enfranchisement shall not be valid—

Consent of ecclesiastical corporations, &c., required to dealings with manors in which they are interested.

- (a) where the manor or land to be affected by the enfranchisement is held under an ecclesiastical or other corporation; or
- (b) where any such corporation or the patron of a living is interested in the manor or land to the extent of one-third of the value thereof; or
- (c) where in the opinion of the Board of Agriculture any such corporation would be affected by the enfranchisement,—

unless the agreement is made with the consent in writing of that corporation or person.

s. 73.

(2.) A consent under this section must, in the case of a corporation aggregate, be under the seal of the corporation, and in other cases be signed by the person giving it; and must in every case be annexed to the agreement to which it relates.

Compulsory enfranchisements are in no way affected by this section.

Voluntary enfranchisements only are affected by the section,—and these only in the cases specified in the section, that is to say:—

- (1) Where the manor is held under any corporation (whether ecclesiastical or civil);
or the land to be affected by the enfranchisement is so held;
- (2) Where any corporation is interested (to the extent of one-third of the value thereof) in the manor; or is interested (to the extent of one-third of the value thereof) in the land to be affected by the enfranchisement;
or where the patron of a living is so interested; and
- (3) Where any corporation would (in the opinion of the board) be affected by the enfranchisement.

And in all these cases, the corporation (or, where it so happens, the patron), must consent in writing to the enfranchisement,—and such consent is to be annexed to the enfranchisement agreement (there being, of course, such preliminary enfranchisement agreement in all cases of a voluntary enfranchisement).

Notice to
Ecclesiastical Com-
missioners
in certain
cases.

73. Where land proposed to be enfranchised under the provisions of this act with respect to compulsory enfranchisement is held of a manor belonging either in possession or reversion to an ecclesiastical corporation, the Ecclesiastical

Commissioners shall have notice of the proceedings and shall have the like power of expressing assent to or dissent from the proceedings as is provided by this Act with respect to a person entitled in reversion or remainder, and the provisions of this act with respect to the notice, and the proceedings thereon, shall apply accordingly.

S. 74.

Voluntary enfranchisements are not within this section.

Compulsory enfranchisements only are within the section,—and that only in the case of the manor belonging (either in possession or in reversion) to a bishop (or archbishop) or to any other ecclesiastical corporation sole or to any ecclesiastical corporation aggregate (being such ecclesiastical corporation as is within the definition of ecclesiastical corporation contained in sect. 94).

And the section provides, that (in such case) the Ecclesiastical Commissioners shall have notice of the enfranchisement proceedings; and these commissioners may either assent to or dissent from the proceedings,—like as (in the case of an ordinary voluntary enfranchisement) a remainderman or reversioner might (under sects. 14 and 16 of the act) express his assent or dissent,—as explained in the notes to these sections. So that in this one instance, the specified provisions applicable (in the ordinary case) to voluntary enfranchisements (and to these alone) become applicable to compulsory enfranchisements, and by way of addition to the other requisites by the act annexed to these latter enfranchisements.

74.—(1.) Any compensation or consideration money to be paid under this act for the use of any spiritual person in respect of his benefice or cure may (at the option of the lord) be paid to Queen Anne's Bounty, and the receipt of the treasurer shall be a sufficient discharge.

Enfranchisement money for use of spiritual person may be

S. 75.
 paid to
 Queen
 Anne's
 Bounty.

(2.) Money paid under this section shall be applied by the Bounty as money in their hands appropriated for the augmentation of the benefice or cure, as the case may be.

This section applies to the case (whether falling within sect. 72 or falling within sect. 73, or not falling, *semble*, within either of these two sections) of the manor being (in whole or in part) a church manor, that is to say, a manor the profits of which are (or are part of) the endowments of any "*benefice*" (*scilicet*, of any ancient vicarage or spiritual rectory) or of any "*cure*" (*scilicet*, of any perpetual curacy or modern vicarage). In all which cases, the patron (or other the lord),—receiving any enfranchisement compensation,—may (under this section),—seeing that he derives no benefit himself from the compensation,—pay it over to the governors of Queen Anne's Bounty,—obtaining (in the usual way) the receipt of the treasurer therefor; and the officers of Queen Anne's Bounty thereafter deal with the money as if it were money appropriated to such benefice or cure for the augmentation of the endowments thereof.

Applica-
 tion of
 enfran-
 chisement
 money
 where
 enfran-
 chisement
 might
 have been
 under
 14 & 15
 Vict. c.
 104.

75. Where, on an enfranchisement under this act, it appears to the Board of Agriculture, that the enfranchisement might have been effected under the Episcopal and Capitular Estates Act, 1851, or any act amending the same—

- (a) the consideration for the enfranchisement shall be paid and applied in like manner as if an enfranchisement had been effected under the said Episcopal and Capitular Estates Act and the acts amending the same; and
- (b) The Church Estates Commissioners and Ecclesiastical Commissioners respectively

shall have the same powers over the consideration money and the interest thereon, and over any land, rentcharges, or securities acquired in respect of the enfranchisement, and over or against any ecclesiastical corporation interested therein respectively, as they would have had if the enfranchisement had been effected (with the consent of the Church Estates Commissioners) under the said acts :

S. 75.

The Episcopal and Capitular Estates Act, 1851, is the 14 & 15 Vict. c. 104; and it is otherwise known, also, as the Ecclesiastical Estates Act, 1851; and it has been amended by the 17 & 18 Vict. c. 116.

Enfranchisements might always have been effected under these acts,—quite irrespectively of the Copyhold Acts, 1841 to 1887; and may still be so effected,—quite irrespectively of the provisions of the Copyhold Act, 1894,—in the cases following, that is to say:—Wherever the manor belongs to any ecclesiastical corporation aggregate or to any ecclesiastical corporation sole as such, and belongs to it not as a trustee, of course, but for the benefit of the corporation itself (whether sole or aggregate).

The enfranchisement (when effected under the Episcopal and Capitular Estates Acts, 1851 and 1854) is always voluntary and not compulsory; and the agreement for the enfranchisement is entered into with the approval of the Church Estates Commissioners (a body of commissioners who act in concert with the Ecclesiastical Commissioners),—and the Commissioners' approval must be expressed in writing: The enfranchisement is completed by deed,—in the form appointed by the commissioners; and the enfranchisement deed is also confirmed by the commissioners, and upon such confirmation becomes effective.

S. 75. The enfranchisement may now be effected under the Copyhold Act, 1894,—without regard to the Episcopal and Capitular Estates Acts,—but necessarily, only upon a due compliance with the provisions contained (as to voluntary enfranchisements) in sect. 72 of the 1894 Act and (as to compulsory enfranchisements) in sect. 73 of that act.

The enfranchisement compensation (being a gross or lump sum) is to be paid as it would be payable if the enfranchisement were carried through under the Episcopal and Capitular Estates Acts, that is to say:—It is paid into the Bank of England, to an account directed by the Church Estates Commissioners; and, of course, it is invested. But it may remain on mortgage of the enfranchised tenement; and the dividends on the investments (or the interest accruing on the mortgage) are applicable (in effect) for the benefit of the corporation who would (if there had been no enfranchisement) have been entitled to the profits accruing to the lord from or in respect of the enfranchised tenement; and the Church Estates Commissioners and the Ecclesiastical Commissioners respectively have the same control over the enfranchisement consideration, and all the same powers and duties in respect thereof and of its application, as if the enfranchisement had been wholly effected under the Episcopal and Capitular Estates Acts.

Provided that where an ecclesiastical corporation or the Ecclesiastical Commissioners have only a reversionary interest in the manorial rights extinguished by the enfranchisement, the consideration, if it is a gross sum, shall be paid into Court or to trustees, and applied under this act accordingly,—until the time when the reversionary interest would if it were not extinguished have come into possession; and the consideration money and the investments thereof shall then be paid or transferred to the Church Estates

Commissioners as persons absolutely entitled thereto. S. 76.

Some of the estates, which were formerly portion of the endowments annexed to the corporations referred to in the Episcopal and Capitular Estates Acts, are now (under the statutes 23 & 24 Vict. c. 124, for Episcopal Estates, and 31 & 32 Vict. c. 114, for Capitular Estates) vested in the Ecclesiastical Commissioners; and (in some cases) the title thereto of the Ecclesiastical Commissioners still remains (as at the date of the original vesting) a title in reversion or remainder only,—*i.e.*, subject to the still continuing life estate of the ecclesiastical dignitary entitled thereto at the date of the vesting. Also, owing to the practice (now obsolete) whereby church-lands (including manors) were granted by the church-dignitary to some lord-farmer for a long term of years or for lives, at a trivial rent per annum (in consideration of the large premium paid on the occasion of the grant),—a practice which for the future was prohibited by the 24 & 25 Vict. c. 103,—it often happens still, that the title of the Ecclesiastical Commissioners, or (where he still remains entitled) of the church-dignitary, is merely a title reversionary on the lease. And in all these cases of the church's title being and remaining reversionary, it is provided by this section (and by this proviso to the section), that the dividends on the investment of the enfranchisement compensation, or the income on the mortgage on which that compensation has been left outstanding, shall be payable according to the title in possession, until that title shall cease, and the reversion shall fall in; and then the whole capital will be paid over to or transferred to the Church Estates Commissioners,—for the purposes of the ecclesiastical commission; and the enfranchisement compensation may (in the meantime) be paid to trustees, when it is not paid into court (*i.e.*, into the bank) to the proper account.

76.—(1.) Where a corporation, or any person, lord of a manor held on a charitable trust within

Enfranchisement money

S. 76 (2).

may be
paid to
official
trustees of
charitable
funds on
behalf of
charity.

the provisions of the Charitable Trusts Acts, 1853 to 1891, is not authorised to make an absolute sale otherwise than under those acts, or this act, the compensation or consideration payable to the lord for an enfranchisement (or for the redemption or sale of a rentcharge under this act) may at the option of the lord be paid to the official trustees of charitable funds in trust for the charity.

An enfranchisement may have been already effected subject to a rentcharge, and that rentcharge may be now going to be redeemed ;

Or an enfranchisement may be in process of being effected,—and for a gross or lump sum :

And in either of these two cases, where the manor is portion of the endowments of a charity, the principal money payable (either as the price for the redemption, or as the price for the enfranchisement) may be paid to the official trustees of charitable funds,—in trust, of course, for the charity. The lord of the manor (whether he be a corporation or a private individual) is, in such a case, a mere trustee of the manor ; and deriving no personal benefit from the principal moneys, he may not wish to be embarrassed with receiving and investing them ; and so they may (at the option of the lord) be paid direct to such official trustees.

(2.) Any principal money paid to the official trustees under this section shall be applied by them, under the order of the Charity Commissioners, for the like purposes as if it had been paid into court under this act ; and in the meantime the money shall be invested, and the income of the investments applied, under the provisions

of the said Charitable Trusts Acts with respect to charitable funds paid to the official trustees. Ss. 77, 78.

Principal moneys paid to the official trustees referred to in sub-sect. 1,—whether on account of an enfranchisement, or on account of the redemption of a rentcharge,—will be applied (like other moneys paid to such trustees) upon trust for the beneficiary entitled thereto,—and in the case of charitable trusts, subject to the order (or control) of the Charity Commissioners, which commissioners are, of course, subject in turn to the control of the court.

77. Any compensation or consideration money to be paid under this act to the use of a corporation, lord of a manor other than a manor held for charitable purposes within the meaning of the Charitable Trusts Act, 1853, and the Charitable Trusts Amendment Act, 1855, may at the option of the lord be paid to trustees appointed by the Board of Agriculture for the purposes of this act.

Enfranchisement money for use of corporation may be paid to trustees.

16 & 17
Vict. c.
137.

This section, upon its strict letter, applies to all corporations that are lords, other than corporations who hold their manors upon trust for some charity; but recourse will not be had to it, save for the purpose expressed in the section (namely, the payment of the enfranchisement consideration to the specially constituted trustees),—and not even for that purpose when the provisions contained in (or applicable to the enfranchisement proceedings under) sects. 72 to 75 are more directly applicable. A form of appointment of such special trustees is comprised among the official forms hereunder (Form, No. 16).

18 & 19
Vict. c.
124.

78. Where any manor belonging to any of the Universities of Oxford, Cambridge, and Durham, or any college therein,—or to either of the colleges

Provision for case of joint lords of manors

S. 78.
belonging
to univer-
sities and
colleges.

of St. Mary at Winchester, near Winchester, or King Henry the Sixth at Eton,—is held by any person on a lease for a life or lives, or for a term of years granted by any such university or college, that university or college and lessee shall jointly constitute the lord of the manor within the meaning of this act; and any rentcharge created under this act on the enfranchisement of land held of that manor shall be in favour of, and the compensation for the enfranchisement may be paid to, the person who at the date of the enfranchisement is entitled in possession to the profits of the manor, his executors and administrators,—but without prejudice to any question as to the further disposal of any money paid in respect of the rentcharge or other compensation respectively. Provided that, on the determination of such lease as aforesaid, any money so paid or any securities in which the same may have been invested shall be paid or applied as enfranchisement money is directed to be paid and applied by section one of the Universities and College Estates Act, 1858.

21 & 22
Vict. c. 44.

The Universities and College Estates Act, 1858 (21 & 22 Vict. c. 44),—and which extends specifically to Christchurch, Oxford,—enables enfranchisements to be made of the copyhold and customary tenements held of university and college manors,—all such enfranchisements being by that act made subject to the control of the Copyhold Commissioners (and now, of course, of the Board of Agriculture). The enfranchisement consideration is (by the act) directed to be paid into the Bank of England to “the account of the Board of Agriculture, *ex parte* the (university or college), in the matter of the (act)” : and are thereafter

laid out (subject to the control of the board) in the purchase of lands, and in the meantime are invested; and the profits of the lands purchased (and the dividends on the investments) are applied, of course, for the benefit of the university or college entitled to the manor.

S. 79.

The act 23 & 24 Vict. c. 59 (which amended the 21 & 22 Vict. c. 44), applied (sect. 4) to the case of university and college manors being in lease; but that amending act (sect. 4) is repealed by this act; and this present 78th section is now substituted therefor, and provides (in effect) for the enfranchisement consideration (when a gross or lump sum) being paid to the lessee,—for the benefit of such lessee during the further continuance of the lease,—and subject thereto, for the benefit of the university or college; and the enfranchisement rentcharge (when the enfranchisement consideration is a rentcharge) is limited in like manner,—for the benefit successively of the lessee and of the university or college.

And by the Universities and College Estates Act, 1898 (61 & 62 Vict. c. 55), the university or (as the case may be) the college may now enfranchise any lands holden of a manor belonging to the university or (as the case may be) to the college; and it effects the enfranchisement, as a tenant for life under the Settled Land Act, 1882, and with the consent of the Board of Agriculture; which board is also constituted (for this purpose) the “Trustees of the Settlement” (within the meaning of that phrase as used in the S. L. Act, 1882), and receives the enfranchisement consideration,—the capital moneys remaining applicable as before, and the income which arises from the investment thereof also remaining payable as before.

79. The following provisions shall apply to every manor in which the fines are certain, and in which it is the practice for copyholders in fee to grant derivative interests to persons who are

Provisions where derivative interests are entered on rolls.

S. 79
(1)-(3).

admitted as copyholders of the manor in respect of those interests :—

- (1.) In the application of this act to any such manor the tenant shall be the person who is admitted or enrolled in respect of the inheritance, and that person is in this section called the tenant-in-fee.
- (2.) The enfranchisement of land to a tenant-in-fee shall enure for the benefit of every person having any customary estate or interest in the land at the date of the enfranchisement; and every such person shall become entitled to an estate or interest in the land corresponding with his customary estate or interest.

This section is a mere repetition of sect. 47 of the repealed Copyhold Act, 1887.

The section has a very limited application, being confined to manors in which there are copyholders *in chief*, with copyholders deriving title under them like *sub-infeudees*,—the fines being in all cases certain, and both grades of copyholders being entered on the court rolls. The Honour of Clitheroe-in-Furness is such a manor,—as are also all the manors (or sub-manors) comprised in that honour.

The short effect of the section is :—The copyholder in chief is the enfranchising tenant (sub-sect. 1); and the enfranchisement to him enures for the benefit of himself and his sub-infeudees (sub-sect. 2).

- (3.) All rentcharges payable in respect of the enfranchisement, and all sums of money payable by a tenant-in-fee for compensation or for the expenses of enfranchisement (and the

interest thereon) shall, if the parties do not otherwise agree, be borne and paid by the several persons for whose benefit the enfranchisement enures, in proportion to their respective interests in the enfranchised land. S. 79
(4) (5).

- (4.) If a dispute arises respecting the apportionment of any such charge or payment, the Board of Agriculture may, on the application of any person interested, after due inquiry, make an order apportioning the same.

And accordingly, the copyholder in chief and his sub-infeudees bear (in due proportion) the enfranchisement expenses,—and pay (in due proportion) the enfranchisement rentcharge, or (when the enfranchisement consideration is a gross or lump sum of money) the enfranchisement compensation (sub-sect. 3),—and the due proportion will, in case of need, be ascertained by the Board of Agriculture (sub-sect. 4).

- (5.)—(a) On the request of the lord, or of one-fourth in number of the copyholders for the time being on the court roll of the manor, and on such provision being made for expenses as the board require, the board may make a local inquiry for the purpose of ascertaining whether the copyholders of the manor desire that an enfranchisement be effected throughout the manor :

(b) If the board find that not less than two-thirds in number of the copyholders desire the enfranchisement, they shall make an order declaring that enfranchisement of all copyhold tenements of the manor shall take

S. 79 (5).

place ; and they shall thereupon proceed to ascertain the compensation payable to the lord on the enfranchisement of each tenement held by a tenant-in-fee, and to effect the enfranchisement of that tenement accordingly. The compensation in every case shall consist of a gross sum of money, unless the lord and tenant-in-fee otherwise agree :

And in such manors,—there may be one general enfranchisement for all the copyholds of the manor,—

And for that purpose, the Board of Agriculture (on the application of the lord of the manor or of one-fourth of the copyholders), due provision being first made for the expenses of the board, will hold a local inquiry, to see if the enfranchisement is generally desired : and if two-thirds in number of all the copyholders are found to desire the enfranchisement, that is sufficient,—and the board will thereupon order a general enfranchisement.

Which general enfranchisement is effected by as many enfranchisements as there are copyholders *in chief*,—one separate enfranchisement being made to each such copyholder,—and in every case, the enfranchisement consideration (unless the lord and the copyholder in chief otherwise agree) is a lump sum of money.

(c) When an order declaring enfranchisement as aforesaid has been made—

(i.) all the tenants-in-fee shall contribute rateably to the expenses of the inquiry according to the amount of compensation payable by them respectively ;

(ii.) the tenant-in-fee and all copyholders holding derivative interests in the same tenement shall contribute rateably, according to the value of their respective

interests, to the compensation, and to all expenses attending the enfranchisement payable by the tenants, including the contribution of the tenant-in-fee to the expenses of the inquiry ;

S. 79 (5).

And the enfranchisement consideration (being such gross sum as aforesaid) in the case of each such separate enfranchisement is paid by the enfranchising tenant and his copyhold sub-feudees in proportion to their respective interests,—the tenant's expenses of the enfranchisement being borne in the like proportion (which expenses include the proportion of the expenses nextly mentioned which has fallen to be borne by the enfranchising tenant); and the expenses of the local inquiry are, in the first instance, borne rateably by all the tenants in chief,—each tenant in chief being entitled to be recouped by his sub-infeudees their due proportions of the proportion of the expenses which shall have fallen on him to pay.

- (iii.) The board may apportion the contributions between the several tenants-in-fee, and also between the several tenants of each tenement, and may make orders for the payment of the contributions and expenses by the persons from whom they are due ;
- (iv.) the board shall not without the consent of the tenant-in-fee make an award for the enfranchisement of any tenement, until they have apportioned the contributions between the tenant-in-fee and the tenants holding derivative interests in the tenement, and have made orders

S. 80.

for payment of, or have satisfied themselves that the tenant-in-fee has full security for, the amounts which the tenants of derivative interests are to contribute :

And in case of need, the board will ascertain the due proportions,—

- (1) Between the tenants in chief ; and
- (2) Between the enfranchising tenant and his sub-infeudees ;

and will make the necessary orders for payment ; and as regards the enfranchising tenant and his sub-infeudees, that apportionment between them (with the consequential orders for payment) is, in general, to precede the completion of the enfranchisement by the enfranchising tenant,—unless the enfranchising tenant shall otherwise direct.

- (6.) Every order of apportionment made by the board shall be binding on all persons interested in the apportionment, and the expenses of and incident to the apportionment shall be paid by those persons, or any of them, as the board direct.

The apportionment made by the board,—and the consequential orders for payment,—are binding

- (1) as between the tenants in chief ; and
- (2) as between the enfranchising tenant and his sub-infeudees.

And the board determines how and by whom the expenses attending the apportionment shall be paid or borne.

Applica-
tion of act
to part of
manor.

80.—(1.) The Board of Agriculture may by order under their seal direct that a part of a manor specified in the order shall be considered

as a manor for the purpose of effecting an enfranchisement under this act, and all the provisions of this act shall apply accordingly.

§. 81.

(2.) An order shall not be made under this section for the purposes of a voluntary enfranchisement without the consent of the lord in writing under his hand and seal.

This section (whereby a complete manor may, for the purposes of the act, be constituted out of portion of a manor) is, apparently, applicable primarily (and perhaps exclusively) to the cases only of manors falling within sect. 79,—when a *general* enfranchisement is desired.

But the section, on its strict letter, is in no way limited,—save only that no such factitious manor may be constituted (save with the consent of the lord,—which consent, if given, is to be given by deed),—for the purposes of any voluntary enfranchisement under the act.

Such factitious manor, when constituted, is constituted by an order of the board,—which order is, of course, under the official seal of the board.

PART VII.—GENERAL LAW OF COPYHOLDS.

81.—(1.) It shall not be lawful for the lord of any manor to make grants of land not previously of copyhold tenure to any person to hold by copy of court roll, or by any customary tenure, without the previous consent of the Board of Agriculture.

Restraint
on creation
of new
copyholds.

(2.) The Board of Agriculture in giving or withholding their consent to a grant under this section shall have regard to the same considerations as are to be taken into account by them in giving or withholding their consent to an inclosure of common lands.

S. 1 (3).

(3.) When a grant has been lawfully made under this section, the land therein comprised shall cease to be of copyhold tenure, and shall be vested in the grantee thereof to hold for the interest granted as in free and common socage.

This section is a mere re-enactment of sect. 6 of the Copyhold Act, 1887.

The Commons Act, 1876 (39 & 40 Vict. c. 56),—which (with the amending acts, 56 & 57 Vict. c. 57, and 62 & 63 Vict. c. 30), is set forth in the Appendix hereunder,—crippled the lord's right of "*approvement*" under the Statute of Merton; and this section (continuing sect. 6 of the 1887 Act) cripples the lord's right of "*granting portions of the waste*,"—the consent or approval of the Board of Agriculture being now (in effect) required in such case; and the board may not signify its consent or approval, except on a due consideration of (and after proper provision is made for) the wants of the neighbourhood.

An *approvement* of the waste under the Statute of Merton, or any inclosure thereof under an Inclosure Act (the Inclosure Act containing no express provision to the contrary), would have been and would still be of freehold tenure.

On the other hand, a grant made (with the consent of the homage) of portion of the waste would have been of copyhold tenure; but now, under this section, such grant having been "*lawfully made*" (that is to say, having received the approval of the board as well as the consent of the homage) passes not a copyhold but a freehold estate, that is to say, the land granted is to be held "*as in free and common socage*," that is to say, it is to be deemed as of freehold tenure, and will be in the same position as copyhold land enfranchised under this act,—that is to say, freehold but held of the enfranchising lord, for the purpose of preserving, *e.g.*, that lord's right of escheat.

- 82.—(1.)** A customary court may be held for a manor—
- | | |
|---|---|
| <p>(a) although there is no copyhold tenant of the manor; and</p> <p>(b) although there is no copyhold tenant or only one copyhold tenant present at the court; and</p> <p>(c) either by the lord or steward or deputy steward.</p> | <p style="text-align: right;">S. 82.</p> <hr/> <p>Power to hold customary court though no copyholder present.</p> |
|---|---|

(2.) A court held under the authority of this section shall be a good and sufficient customary court for all purposes:

Provided as follows:—

- (a) A proclamation made at the court shall not affect the right or interest of any person not present at the court unless notice of the proclamation is duly served on him within one month after the holding of the court; and
- (b) This section shall not apply to a court held for the purpose of receiving the consent of the homage to a grant of common or waste land to hold by copy of court roll.

The simplifications expressed in this section were first introduced into the law of Court-Keeping by the Copyhold Act, 1841 (4 & 5 Vict. c. 35), s. 86; and the proviso annexed to this present section was also contained in (being sect. 91 of) the 1841 Act.

The only matter requiring comment is the proviso,—which has a two-fold application.

- (1.) Maintaining the old Court-Keeping (in other words, requiring the old common law Customary Court) for the purpose of receiving the homage's consent

S. 83.

(when such consent is required) to a grant of the waste,—there being a manorial custom enabling the lord to so grant the waste (s): and

- (2.) Requiring, in the case (*e.g.*) of a proclamation *quousque* (made at any such statutory court as is appointed by this section), that within one calendar month from the holding of the court notice of the proclamation shall be duly served on the party whose right is (or may be) affected by the proclamation.

Both which provisions are limitations or restrictions upon the lord,—and the second of them is, in the general case, an unworkable provision,—*scil.*, in the case of a proclamation *quousque*, when the party whose right is to be affected thereby is (as in general he is) unknown; but possibly the notice, if given according to the provisions of sect. 57 of the act, would be deemed duly served within the meaning of this proviso.

Power to
make
grants out
of manor
and out of
court.

83. Where a lord may grant land to hold by copy of court roll or by any customary tenure, the grant may be made—

- (a) out of the manor; and
- (b) without holding a court; and
- (c) either by the lord or steward or deputy steward:

Provided that where by the custom of a manor the lord is authorised with the consent of the homage to grant any common or waste lands to hold by copy of court roll (t), this section shall not authorise the lord to make the grant without the

(s) *Lord Northwick v. Stanway*, 3 B. & P. 347.

(t) *Lord Northwick v. Stanway*, *supra*.

consent of the homage assembled at a customary court. S. 84.

This section is a mere re-enactment of sect. 87 of the Act of 1841; and the proviso is (in effect) sect. 91 of that act.

Contrasting this section with the next section, it is plain, that the grant here referred to is a voluntary grant, as distinguished from an admittance (although every admittance imports also a grant). And by voluntary grant is meant a *new grant*,—made otherwise than to the party entitled under any devise or surrender to his use or under any other instrument conferring title on him.

Such new grant may, of course, be made by the lord of any copyhold which has escheated to him; or of any copyhold which he has seized *quousque*, on the complete and absolute failure of any tenant to come forward to take admittance according to the theretofore existing copyhold title. Or it may be made when, *e.g.*, there is a custom of the manor enabling the lord to grant portions of the waste,—the lord first obtaining (where by the custom it is required that he shall first obtain) the consent of the homage to the grant.

And as regards all such grants (save only the one lastly mentioned), the grant (although voluntary) may be made out of court, and even out of the manor,—and either by the lord himself, or by his steward, or by the deputy steward; but not so, if the grant is of portion of the waste under the custom, and the consent of the homage is (by the custom) required for the validity of the grant.

84.—(1.) A valid admittance to land of copyhold or customary tenure may be made— Manner of making admittance.

- (a) out of the manor; and
- (b) without holding a court; and
- (c) without a presentment by the homage

S. 85.

of the surrender, instrument, or fact in pursuance of which the admittance is made; and

(d) either by the lord or steward or deputy steward.

(2.) Any person entitled to admittance may be admitted by his attorney duly appointed whether orally or in writing.

By sect. 88 of the Act of 1841, it was for the first time provided, that admittances might be made out of court, and even out of the manor,—and that either by the lord or the steward or by the deputy steward,—the law theretofore having been that the lord might, but that the steward or deputy steward might not, admit out of the manor, or out of court (*u*). And by sect. 90 of the Act of 1841, it was for the first time provided, that, for the validity of an admittance, no previous presentment should be required of the devise or surrender (or of other the instrument or fact) entitling the party admitted to be admitted. And the provisions of both these two sections are re-enacted by this present section,—and with this addition thereto, namely, that the admittance may be taken by duly constituted attorney,—and such attorney may, for this purpose, be constituted either orally or in writing.

Surrenders, &c. out of court to be entered on court rolls.

85.—(1.) Every surrender and deed of surrender which a lord is compellable to accept or accepts, and every will a copy of which is delivered to him either at a court at which there is not a homage assembled or out of court, and every grant or admittance made in pursuance of this act, shall be entered on the court rolls.

(2.) An entry made in pursuance of this section

(*u*) *Melwich's case*, 4 Rep. 26b.

shall be as valid for all purposes as an entry made in pursuance of a presentment by the homage. S. 86.

(3.) The steward shall be entitled to the same fees and charges for an entry under this section as for an entry made in pursuance of a presentment by the homage.

The lord (personally or by his steward) is required by this section to enter on the court rolls the following:—

(1.) Any surrender which he accepts (or which, being by a proper surrenderor and in proper form, he is compellable to accept); also,

Any deed of surrender similarly situated or circumstanced;

(2.) Any will (or codicil) a copy of which is delivered to him,—either out of court or at any merely statutory court;

(3.) Every grant made pursuant to sect. 83; and

(4.) Every admittance made pursuant to sect. 84.

And he is to do so, although there may have been no presentment of the surrender (or deed of surrender), or of the will (or codicil), or of the grant, or of the admittance; and the entry has all the effect of an entry made on a due presentment, and entitles the steward to all the like fees and charges as on such last-mentioned entry (x).

And these provisions are a mere re-enactment of the provisions contained in sect. 89 of the Act of 1841.

86.—(1.) A lord may, notwithstanding any custom to the contrary, grant a licence to a tenant to alienate his ancient tenement or any part thereof by devise (y), sale, exchange, or mortgage, and either together or in parcels.

Power to alienate ancient tenements in portions with licence of lord.

(x) 1 Vict. c. 26, ss. 4, 5.

(y) *Devise* is apparently a mistake for *demise*: See p. 10, foot-note.

S. 86.
(2)-(5).

(2.) On the alienation under this section of a part of a tenement, or of a tenement in parcels, the lord may apportion the yearly customary rent payable for the whole tenement.

(3.) A parcel alienated under this section shall be subject to its apportioned part of the customary rent, and shall be held of the lord of the manor in all respects and be conveyed in like manner as the original tenement.

This section (so far as these three sub-sections go) is a mere re-enactment of sect. 92 of the Act of 1841,—the words “*either together or in parcels*” being, however, a somewhat inaccurate phrase, seeing that it is in intended substitution for the old words, “*in such parcel or parcels as he shall think proper.*”

By the custom of most manors, a licence to alienate is required,—and if the alienation is to operate by way of *common law assurance*, that licence is invariably (and necessarily) required.

But the alienations referred to in the present section (namely, by demise or by surrender) are (or at least, usually and almost invariably are) *customary* and not common law assurances; and for these, a licence is required (where it is required at all), only for an alienation of part of the tenement, as distinguished from an alienation of the whole of the tenement, of the aliening tenant; and (in and by the licence) the lord will also (as he may do) apportion the quit rent, rateably between the severed portions of the tenement; and every such apportionment is legally effective.

(4.) A licence under this section must be in writing and must be entered on the court rolls.

(5.) A steward may give a licence under this

section, if authorised in writing by the lord, but not otherwise. S. 87.

The licence (which is a somewhat formal and intricate document) must of course be in writing (sub-sect. 4).

Nor may the steward grant such licence,—unless authorised in that behalf by the lord of the manor (sub-sect. 5); and such special authority must be in writing.

And the licence must be duly entered on the court rolls (sub-sect. 4); and when it is given by the steward under such special authority as aforesaid, the writing which contains that special authority must also, *semble*, be entered.

The terms of the licence must, of course, be exactly pursued,—it being, in this respect, like a power of appointment, the terms of which also must be exactly observed.

87. In an action for the partition of land of copyhold or customary tenure, the like order may be made as may be made with respect to land of freehold tenure. Partition
of copy-
hold land.

When land is held by tenants in common (that is to say, in undivided shares), the undivided moiety or part of each tenant is itself a tenement,—for the purposes of surrender, admission, and the like; but the entirety of the original tenement is not thereby broken. That entirety is, however, broken on a partition; and the old statutes enabling joint tenants and tenants in common to compel (as between themselves) a partition (31 Hen. VIII. c. 1, and 32 Hen. VIII. c. 32) did not apply to copyhold or customary tenements (*Horncastle v. Charlesworth*, 11 Sim. 315). And until the Copyhold Act, 1841, sect. 85, expressly enabled the court to effectuate the partition of copyholds, that relief could not be obtained,—save (if at all) by a very circuitous process (*Bolton v. Ward*, 4 Ha. 530),—and with the intervention of the lord (*Oakeley v.*

- S. 88. *Smith*, 1 Eden 261). But since the Copyhold Act, 1841, the partition of copyholds has been,—and under this act it will continue to be,—carried out, by and under the like order as would be made for the partition of freeholds (*Clarke v. Clayton*, 2 Giff. 333).

Descent of
trust and
mortgage
estates in
copyholds.

88. Section thirty of the Conveyancing and Law of Property Act, 1881, shall not apply to land of copyhold or customary tenure vested in the tenant on the court rolls on trust or by way of mortgage.

A sole (or sole surviving) trustee or mortgagee of freehold hereditaments might (prior to the Conveyancing Act, 1881) have effectually devised (and did in general devise) his trust or mortgage estates. But under the thirtieth section of that act, such devise is now inoperative,—and the estates descend (in all cases) upon his legal personal representative or representatives.

Upon the words of the section, it was at first doubtful if they applied (but it was afterwards decided that they did apply) (z) to copyhold hereditaments,—and thereby (the legal personal representative being in general a plurality of persons) the lord, it was said, obtained an undue advantage, as regards his fines upon admission,—but (save for that one, real or apparent, disadvantage) the decision that the thirtieth section extended to copyhold hereditaments was an exceedingly convenient one in business; and the evil (if any) attendant on it might have been met by enacting, that (for all the purposes of admittance, including the lord's fine on admittance), the legal personal representatives should, however numerous they were, be deemed in law to constitute but one person.

However, the legislature was, apparently, otherwise advised,—for by the forty-fifth section of the Copyhold

(z) *In re Hughes*, W. N. 1884, p. 53, cited in *In re Mills*, 37 h. D. 312; 40 Ch. D. 14.

Act, 1887 (of which this present section is a mere re-enactment), it was provided (and the law now is), that the old devise of trust and mortgage estates should, as regards copyholds, become again as operative as it was before the Conveyancing Act, 1881.

S. 89.

The words of the present eighty-eighth section "*shall not apply*" have clearly a future operation only; and the like words in sect. 45 of the Act of 1887 had also clearly a prospective operation only.

89.—(1.) Where an agreement for enfranchisement is made *independently of this act*, and the consideration for the enfranchisement is a gross sum and does not exceed five hundred pounds, the lord may make a statutory declaration stating the particulars of his estate and interest in the manor.

Receipt
for con-
sideration
where
under
500*l.* for
enfran-
chisement
not under
act.

(2.) If the declaration shows that the lord is entitled to make the enfranchisement, and to receive the consideration money for his own use, an enfranchisement by the lord shall be valid, and the lord's receipt for the consideration money shall effectually discharge the person paying it from being bound to see to the application or being answerable for any loss or misapplication thereof.

(3.) Where a lord receives as the consideration for an enfranchisement within this section any money to which he is not in fact entitled for his own use, he shall be deemed to have received the money as trustee for the persons who are entitled thereto.

Enfranchisements at the common law,—that is to say, apart altogether from the Copyhold Act or any other

S. 89 (3). public enabling acts,—may be effected, whenever the lord and tenant (being respectively competent in this behalf) agree upon the enfranchisement; but such enfranchisements (as we have elsewhere in this treatise explained) (a) were attended, in general, with numerous disadvantages,—and only one of these disadvantages is attempted to be removed (and is in part removed) by the present section, that is to say:—

Where the enfranchisement consideration is a gross or lump sum and does not exceed 500*l.*, the enfranchising lord may give a receipt for that consideration,—which shall effectually discharge the enfranchising tenant, and the enfranchisement will be valid,—provided the lord (or, *semble*, his steward) first make a statutory declaration to the effect, that the enfranchising lord is lord of the particular manor, entitled (under such and such a deed or will or other specified title) for an estate in fee simple or in fee tail in the manor, or (if for life only or for any other limited estate) with a power to enfranchise and to receive the enfranchisement consideration for his own use. And thereupon the lord, if he should in fact not be entitled as in the declaration expressed, is accountable for the enfranchisement consideration received by him, as a trustee for the person or persons rightfully entitled to it; but the enfranchisement itself is not in such a case invalidated.

On the other hand, if the statutory declaration is not made,—or if it is insufficient to satisfy the requirements of this section, the enfranchisement would be invalidated; and the enfranchisement consideration paid would be recoverable (if recoverable at all), by the party paying it, against the lord who had received it, or against his estate.

And, of course, the section is not applicable at all, excepting when the enfranchisement consideration is a gross sum of money, and amounts to 500*l.* only, or to any less sum.

(a) *Supra*, pp. 14—21.

PART VIII.—AUTHORITY FOR EXECUTION
OF ACT.

90. The Board of Agriculture shall in every year make a general report of their proceedings in the execution of this act, and the report shall be laid before both houses of parliament as soon as may be after it is made.

S. 90.

Board of
Agriculture to
make
annual
report.

The policy of the Copyhold Enfranchisement Act being (as that of the earlier Copyhold Acts also was) to encourage enfranchisements,—and parliament (rightly or wrongly) considering that the general public is interested,—or that the public welfare is in some way concerned,—in the matter,—

It is, therefore, by this section enacted, that a yearly report of the proceedings of the Board of Agriculture relative to enfranchisements shall be made by the board, and laid before both houses.

91.—(1.) The Board of Agriculture may delegate to any officer of the board any of their powers under this act,—except the power to confirm agreements or awards, or to frame forms, or to do any act required by this act to be done under the seal of the board.

Delegation
of powers
of board.

(2.) The powers so delegated shall be exercised under such regulations as the board direct.

(3.) The board may recall or alter any power delegated under this section, and may, notwithstanding the delegation, act as if no delegation had been made.

(4.) All acts done by an officer of the board

S. 92. lawfully authorised in pursuance of this section shall be obeyed by all persons as if they proceeded from the board, and the non-observance thereof shall be punishable in like manner.

The board may act by its duly appointed delegate (being an officer of the board),—save as regards any matter in which, or in the execution of which, the board is (by the act) required to personally intervene. But,—

- (1.) The confirmation of voluntary enfranchisements (and of the preliminary agreements therefor);
- (2.) The confirmation of awards of enfranchisements (that is, of compulsory enfranchisements); and
- (3.) The framing of official forms,—

all these (and any other matters which are required to be under the seal of the board) must be done by the board personally,—that is to say, so far as a corporation (like the board is) can be said to act personally.

And even in a case of proper delegation, the board exercises a continuing superintendence and control over its delegates; and may (but in general will not) rescind or ignore the delegation, and thereupon act personally in the matter.

Power of
entry for
purposes
of act.

92.—(1.) A member or officer of the Board of Agriculture and a valuer or umpire appointed under this act, and their agents and servants respectively, may enter on any land proposed to be dealt with under this act, and may make all necessary measurements, plans, and valuations of the land.

(2.) A person, before entering on land under this section, must give reasonable notice of his intention to the occupier of the land.

(3.) If a person does any injury in the execution

of the powers of this section, he shall make compensation therefor. S. 93.

- (1.) A member of the Board of Agriculture,—
or (1a) Any officer of the board ; *or*
- (2.) A valuer (or an umpire) appointed under the act,—
or (2a) any agent or servant of such (valuer or umpire),—

may (first giving reasonable notice of his intention in that behalf to the occupying tenant) enter upon any land proposed to be dealt with under the act,—

And having so entered, may remain thereon, for the purpose of making (and may make) any measurement of the land or any plan thereof, or any valuation,—that may be necessary for the purposes of the enfranchisement (or for any purposes incidental thereto),—or, in fact, for any other of the purposes of the act,—

Nevertheless he (*i.e.*, the member or officer of the board or the valuer or umpire) must make to the occupying tenant compensation for any injury that he may have done to the latter by his entering upon (or remaining on) the land (whether by himself or by his agents or servants).

93. If any person obstructs or hinders a member or officer of the Board of Agriculture or a valuer or umpire acting under the powers of this act, he shall be liable on summary conviction to a fine not exceeding five pounds.

Penalty
for ob-
structing
persons
adminis-
tering act.

By summary conviction is, of course, meant a conviction, without any *regular* criminal trial,—and which is obtained summarily, before the justices of the peace, or otherwise under the provisions of the acts commonly known as the “Summary Jurisdiction Acts” (11 & 15 Vict. c. 43 ; 42 & 43 Vict. c. 49 ; 44 & 45 Vict. c. 24 ; and 47 & 48 Vict. c. 43).

PART IX.—DEFINITIONS, SAVINGS, AND
REPEAL.

S. 94.

Interpre-
tation.

94. In this act, unless the context otherwise requires—

The expressions “admittance” and “enrolment” include every licence of any assurance, and every ceremony, act, and assent whereby the tenancy or holding of a tenant is perfected, and the expressions “admit” and “enrol” have corresponding meanings :

A copyholder is admitted,—but even before admittance, he is owner and (for some purposes) tenant: and on admittance, he becomes perfect tenant (*b*).

An ancient freeholder is not admitted,—and is both owner and (at least for some purposes) tenant without any admittance; but his title must be acknowledged on the roll; and on such enrolment, he becomes perfect tenant.

A customary freeholder is (in the general case) like a copyholder proper, in all the aforesaid particulars; but occasionally he may convey by common law assurance, provided that assurance be first licensed by the lord.

A copyholder or a customary freeholder (requiring to be admitted), and a customary freeholder whose common law assurance requires to be first licensed, and an ancient freeholder whose title only requires to be acknowledged,—may respectively be admitted, licensed, or enrolled,—*by implication*, as it is called: *i.e.*, by some unambiguous act or assent on the lord's part, or, *semble*, on the part of his steward (*c*).

The expression “ecclesiastical corporation”
means an ecclesiastical corporation within

(*b*) *Reg. v. Dullingham Manor*, 8 A. & E. 858.

(*c*) *Ecclesiastical Commissioners v. Parr*, (1894) 2 Q. B. 420; but see *Reg. v. Dullingham Manor*, *supra*.

the meaning of the Episcopal and Capitular Estates Act, 1851, and the acts amending the same :

S. 94.

The Ecclesiastical Commissioners are not an ecclesiastical corporation within the meaning of the act, or indeed an ecclesiastical corporation at all.

The 11th section of the Episcopal and Capitular Estates Act, 1851, defined all the ecclesiastical corporations that were originally intended to fall within the provisions of the act ; and parsons, vicars, and perpetual curates were thereby excluded,—as also the college or house or cathedral church of Christchurch, Oxford. But as regards parsons and vicars, all these are now included in the act, by force of the 24 & 25 Vict. c. 105, s. 3. (See the Appendix of Statutes.)

The expression “enfranchisement” includes the discharge of freehold lands from heriots and other manorial rights :

Under this definition, it is just possible that copyholds which have been commuted under the provisions as to commutation contained in the earlier Copyhold Acts may be enfranchised (*i.e.*, further enfranchised) under this act ; and that possibility is the more probable, seeing that all the earlier acts are now repealed by this act, and no provisions (specifically applicable to future commutations) are contained in this act.

The expression “heriot” includes a money payment in lieu of a heriot :

By the varying customs of different manors, a heriot may be either the tenant's best beast or his second best beast or his only beast or (if he has no beast at all) a fixed sum of money in lieu of the beast ; or it may (at the option of the lord) be either the best beast or best inanimate

S. 94. chattel or a sum certain in money; or it may be a sum certain in lieu of a heriot.

The liability of the tenement (whether it be a copyhold proper or a customary freehold or an ancient freehold) to such heriot, in whatever form, is a proper manorial incident to be discharged by the enfranchisement; and heriots (*scil.*, being heriot custom) are not easily barred by any statute of limitation (*d*); while as regards heriot-service, the applicability of the statutes of limitation to these, seems altogether doubtful at present (*e*).

The expression "land" includes an undivided share in land :

The undivided moiety of a tenant in common is, of itself, a tenement,—permitting of (and indeed requiring) a separate surrender and a separate admittance,—with separate fines and fees; and it may, *semble*, be enfranchised accordingly. But for a voluntary (or other) enfranchisement of the entirety, two-thirds in value of the undivided owners must desire it.

The expression "lord" means a lord of a manor whether seised for life or in tail or in fee simple and whether having power to sell the manor or not, or the person for the time being filling the character of or acting as lord whether lawfully entitled or not, and includes all ecclesiastical lords seised in right of the church or otherwise, and lords farmers holding under them, and bodies corporate or collegiate :

That is to say,—the lord need not be entitled in fee

(*d*) *Chichester v. Hall*, 17 L. T. I. 121; *Zouche v. Dalbiac*, L. R. 10 Exch. 122.

(*e*) See pp. 19, 20, *supra*.

simple or in fee tail, but may be entitled for his life only or for any other limited estate. S. 94.

And he need not (when a limited owner) have any power of sale.

Nay, even a lord not entitled to the manor at all, but who for the time being fills (*scil.*, assumes) the character of lord or acts (*scil.*, presumes to act) as lord.

Also, parsons, vicars, and perpetual curates (if entitled as lords) are within the act,—also lords within the purview of the Episcopal and Capitular Estates Act, and their lords-farmers.

Also, bodies corporate ;

And bodies collegiate.

The expression “manor” includes a reputed manor ;

A reputed manor is a manor which was originally well created as a manor, but which through ceasing to have any lands annexed to it or otherwise is become only a manor by reputation (*f*); and it has been commonly stated, that if a manor comes to have fewer than two freehold tenants in fee simple holding of it (*i.e.*, two ancient freeholders holding of it), it ceases to be a manor properly so called, and becomes merely a manor by reputation or a reputed manor.

But a reputed manor continues, in general, to have annexed thereto many of the incidents of a manor ; and among them, the right in the lord thereof (under this act or otherwise) to grant enfranchisements to tenants.

The expression “rent” includes reliefs and services (not being services at the lord’s court), and every payment or render in money, produce, kind, or labour due or

(*f*) *Doe d. Clayton v. Williams*, 11 Mee. & W. 803.

S. 94. payable in respect of any land held of or parcel of a manor :

The rent (in the case of ancient freeholds) is a chief rent; and (in the case of copyholds and customary freeholds) is a quit rent.

In either case, it is of small amount,—having originated before the time of living memory.

The relief is usually one year's chief rent or (as the case may be) quit rent.

As regards the other services referred to, namely, “services (not being services at the lord's court)” it is reasonably certain that heriot-service and the like, being services for which an ordinary distress may be made, are intended to be here referred to.

The expression “steward” includes a deputy steward, and a clerk of a manor, and any person for the time being filling the character of or acting as steward, whether lawfully entitled or not:

A deputy steward is, in general, invested with less extensive powers than the steward himself; but for the purposes of this act, the powers of the steward and of the deputy steward are equally extensive,—and also equally limited, of course, by sect. 23, sub-sect. 2.

The clerk of the court,—*e.g.*, of the Halmote Court of Durham,—is also a steward for all the purposes of the act; and so also is an “*under-steward*,” who must not be confounded with a “*deputy-steward*.”

Nay, even a man (or woman) who for the time being fills the character of,—or who acts as,—steward, is a steward for the purposes of the act; but not, *semble*, where he or she wrongfully assumes to fill that character, or to act in it,—the definition of “steward” being, in this particular, different from the definition of “lord.”

The expression "tenant"—

S. 94.

- (a) includes all persons holding by copy of court roll or as customary tenants, or holding land subject to any manorial right or incident, and whether the land is held to them and their heirs or to two or more in succession or for life or lives or years, and whether the land is held of a manor or not;

That is to say:—

- (1) Copyholders proper,
- (2) Customary freeholders, and
- (3) Ancient freeholders;

and in the case of each, whether entitled in fee simple or in fee tail, or for life or other limited estate,—or for successive lives, or for years; and whether entitled solely or in co-tenancy.

And the tenement need not be (although usually it will be) "*held of a manor*,"—or of a reputed manor. But what the words "*not held of a manor*" are intended to denote, it is very difficult indeed to say. That phrase did not occur in the definition of "tenant" contained in the Copyhold Act, 1841. The phrase, it is just possible, refers to the freehold grantee of the lord's right in the particular copyhold (or other) tenement, which freehold grantee would not, of course, be lord of the manor (*g*); and yet the copyhold tenement would be held under him,—and so would be enfranchised by him.

- (b) and includes a surrenderee by way of mortgage, under a surrender entered on the court rolls, in possession or in receipt of the rents and profits of the land;

A mortgagee of copyholds, if the mortgage is by way of conditional surrender (and under which therefore the

(g) *Murrell v. Smith*, 4 Rep. 24b.

S. 95. mortgagee may at any time obtain admittance on the court roll as tenant) and if he is in possession as mortgagee and his surrender has been entered on the court rolls, is a tenant for the purposes of the act; but, of course, before he can accept an enfranchisement or complete any enfranchisement, he must be actually admitted on the court roll as tenant. Also, note, that such a mortgagee, even if admitted as tenant, cannot (unless he is also in possession as mortgagee) either compel an enfranchisement or be compelled to accept an enfranchisement (sect. 1).

(c) and where land is held in undivided shares, means the person for the time being in receipt of at least two-thirds of the value of the rents and profits of the land.

If it is desired to have an enfranchisement of the entirety of the tenement, the two-thirds in value of the undivided owners must concur in the requisition,—or agreement,—for the enfranchisement.

Secus, if the undivided owner wants only an enfranchisement of his one undivided share.

The expression “ valuer ” includes an umpire.

General
savings.

95. Nothing in this act—

- (a) shall affect the custom of gavelkind in the county of Kent: or
- (b) shall authorise a lord to enclose any common or waste land: or
- (c) shall revive any right to fines or other manorial claims which are at any time barred by any statute of limitations: or
- (d) shall interfere with any enfranchisement which may be made independently of this act: or

- (e) shall interfere with the exercise of any powers contained in any other act of parliament : or S. 95.
- (f) shall, except as in this act expressly provided, apply to manors or land vested in her Majesty in right of the crown or of the duchy of Lancaster : or
- (g) shall extend to or prejudice the estate, right, title, privilege, or authority of her Majesty in right of the duchy of Cornwall, or the possessions thereof, or of the Duke of Cornwall for the time being : or
- (h) shall extend to manors belonging either in possession or reversion to any ecclesiastical corporation (or to the Ecclesiastical Commissioners) where the tenant has not a right of renewal.

Copyholds properly so called may (by the custom of the particular manor of which they are held) have all or some of the incidents of gavelkind ; and such copyholds may, of course, be enfranchised, under the act (as also apart from the act). But the gavelkind tenure of lands in Kent cannot be dealt with under this act,—disgavelling and enfranchising being very different things.

The act,—having for its object the enfranchisement of lands,—is not, of course, to be construed as authorising the lord to make an enclosure of waste. And is not (*i.e.*, sect. 3 or any other section of the act is not) to be construed to revive any right to fines which are statute-barred, or any other manorial rights which are statute-barred. Moreover, the act is not to interfere with enfranchisements effected independently of it,—so as, *e.g.*, to enable a right of escheat (or any services properly so called) to be reserved by lords enfranchising under their

Ss. 96, 97. common law powers; or so as, *e.g.*, to prevent the reservation of any rights, services, or conditions authorised to be reserved by the particular statute under which the enfranchisement is effected.

And as regards the crown and the duchy of Lancaster, the act only applies, where it is (in the act itself) expressed to apply.

And as regards the duchy of Cornwall, the act has no application whatever.

And the act gives no right to enfranchise to tenants (of church lands) who are merely tenants for a life or lives without a *right of renewal*,—which right is, however, often a subject of dispute (*h*).

Savings as
to com-
pulsory
enfran-
chisement.

96. The provisions of this act with respect to a compulsory enfranchisement shall not apply—

(a) to any copyhold land held for a life or lives or for years where the tenant has not a right of renewal; nor

(b) to manors in which her Majesty has any estate or interest in possession, reversion, or remainder.

That is to say,—

So far as regards the crown (whether in respect of the crown proper or in respect of the duchy of Lancaster), the compulsory provisions of the act have no application whatever.

And so far as regards copyholders for a life or lives who are without any right of renewal,—these may effect voluntary enfranchisements,—but cannot either require (or be required to accept) any compulsory enfranchisement,—under the act.

Saving as
to land
registry.

97. Nothing in this act shall affect any right acquired in pursuance of registration under the

(*h*) See pp. 116, 117, *supra*.

Land Registry Act, 1862, or the Land Transfer Act, 1875, except to such extent as may be recorded by registration in pursuance of those acts.	S. 98. 25 & 26 Vict. c. 53. 38 & 39 Vict. c. 87.
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The Land Registry Act, 1862 (25 & 26 Vict. c. 53) is the act under which the office of "land registry" was first established,—and if the requisites of that act had been observed, an indefeasible title would (on the completion of the proceedings) be conferred,—a somewhat similar object being also obtained under the 25 & 26 Vict. c. 67, upon a "*judicial declaration*" of title being obtained thereunder.

The Land Transfer Act, 1875 (38 & 39 Vict. c. 87), has no application to copyholds properly so called nor to customary freeholds; but the enfranchisement deed has, of course, the effect of bringing these classes of tenements within the act, once they have been enfranchised under the Copyhold Act, 1894 (*i*),—and thereupon the usual effects of registration under the Land Transfer Act, 1875, as amended by the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), will follow, but no other effects. And by sect. 125 (Land Transfer Act, 1875), all registrations of title under the 25 & 26 Vict. c. 53, have been (for the future) superseded by the registration under the Land Transfer Acts, 1875, 1897.

- 98.**—(1.) The provisions of this act relating to—
- | | |
|--|--------------------------------------|
| (a) the grant of easements to a lord of a manor for mining purposes; | Applica-
tion of act
to Crown. |
| (b) the holding of customary courts although a copyhold tenant is not present; | |
| (c) the making of grants or admittances out of the manor and out of court; | |
| (d) the making of admittances without a presentment by the homage; | |

(*i*) *Reg. v. Middlesex Registrar*, 21 Q. B. D. 555.

Ss. 99,
100.

(e) the entry of surrenders and wills on the court rolls; and

(f) the partition of lands of copyhold or customary tenure,—

shall extend to manors and lands vested in her Majesty in right of the crown or of the duchy of Lancaster.

The simplifications in the general law of copyholds, which were effected by the Copyhold Act, 1841, and which are re-enacted by sects. 82, 83, 84, 85, and 87 of this act; are (by this section) extended generally to copyholds and customary freeholds held of the crown (whether as such or in respect of the duchy of Lancaster). And the provisions of sect. 24 of the act are (by this section) also extended to such copyholds and customary freeholds, held of the crown or of that duchy.

(2.) The said provision relating to the grant of easements shall extend to an enfranchisement of land held of a manor vested in her Majesty effected under the provisions of any existing act of parliament.

And by this sub-section, the provisions of sect. 24 of the act are extended generally to all enfranchisements in crown manors (including, *semble*, duchy of Lancaster manors),—which are effected under any other act of parliament (which on the 25th August, 1894, was already passed and not repealed); or, of course, which may be effected under the Copyhold Act, 1894.

Extent of
act.

99. This act shall not extend to Scotland or Ireland.

Repeal.

100. The enactments described in the third schedule to this act are hereby repealed to the

extent appearing in the third column of the said S. 101.
schedule.

Provided that all awards, deeds, orders, certificates, scales, instruments, charges, and rent-charges made, executed, granted, created, or having effect under any enactment repealed by this act shall have effect as if this act had not passed.

101. This act may be cited as the Copyhold Short title.
Act, 1894.

Schedules.

SCHEDULES.

FIRST SCHEDULE.

FORMS.

Sect. 5. 1. *Declaration to be made by Valuers and Umpires.*

I, *A.B.*, declare that I will faithfully, to the best of my ability, value, hear, and determine the matters referred to me under the Copyhold Act, 1894.

A.B.

Made and subscribed in the presence of
 this day of 190 .

Sect. 41.

2. *Certificate of Charge.*

The Board of Agriculture hereby certify, that the land mentioned in the schedule to this certificate is charged with the payment to *A.B.*, his executors, administrators, or assigns, [*or to the lord of the manor of for the time being*] of the following series of periodical payments; that is to say, the sum of pounds payable on the day of , the further sum of pounds payable on the day of &c. [*or with the principal sum of pounds with interest thereon after the rate of per cent. per annum, the principal to be repayable in manner following, that is to say (state the terms)*]; and the board further certify, that after payment of the series of periodical payments above mentioned [*or after payment of the principal money hereby charged and all arrears of interest due thereon*] this certificate shall be void. In witness whereof the Board of Agriculture have hereunto set their official seal this day of 19 .

*The Schedule.**E.F.**G.H.*

3. *Transfer of Certificate of Charge.*

Schedules.

I, *A.B.*, of hereby transfer the within certificate Sect. 41.
of charge to *C.D.* of

Dated this day of 19 .

*A.B.*4. *Notice of Right to Enfranchise.*

Sect. 42.

Take notice, that if you desire that the copyhold land which you hold of this manor of shall become freehold, you are entitled to enfranchise the same, on paying the lord's compensation and the steward's fees. The lord's compensation may be fixed either by agreement between the lord and you, or by a valuer appointed by the lord and you, or through the agency of the Board of Agriculture, to whom you may make application, if you think fit, to effect the enfranchisement.

5. *Power of Attorney.*

Sect. 48.

Manor of in the county of .

I, *A.B.*, of , hereby appoint *C.D.*, of , to be my lawful attorney, to act for me in all respects as if I myself were present and acting in the execution of the Copyhold Act, 1894.

Dated this day of 19 .

(Signed) *A.B.*

Schedules.

SECOND SCHEDULE.

Sect. 9.

SCALE OF STEWARD'S COMPENSATION.

When the consideration for the enfranchisement—

	£	s.	d.
Does not exceed 1 <i>l.</i> - - - -	0	5	0
Exceeds 1 <i>l.</i> but does not exceed 5 <i>l.</i> - -	0	10	0
„ 5 <i>l.</i> „ „ 10 <i>l.</i> - -	1	0	0
„ 10 <i>l.</i> „ „ 15 <i>l.</i> - -	2	0	0
„ 15 <i>l.</i> „ „ 20 <i>l.</i> - -	3	0	0
„ 20 <i>l.</i> „ „ 25 <i>l.</i> - -	4	0	0
„ 25 <i>l.</i> „ „ 50 <i>l.</i> - -	6	0	0
„ 50 <i>l.</i> „ „ 100 <i>l.</i> - -	7	0	0

For every additional 50*l.*, or fractional partof 50*l.*, over and above the first 100*l.* - 0 10 0

The compensation to be exclusive of stamps and paper or parchment or map or plan, which are to be paid for by the tenant.

Sect. 100.

THIRD SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
4 & 5 Vict. c. 35.	The Copyhold Act, 1841 ..	The whole Act.
6 & 7 Vict. c. 23.	The Copyhold Act, 1843 ..	The whole Act.
7 & 8 Vict. c. 55.	The Copyhold Act, 1844 ..	The whole Act.
15 & 16 Vict. c. 51.	The Copyhold Act, 1852 ..	The whole Act.
21 & 22 Vict. c. 94.	The Copyhold Act, 1858 ..	The whole Act.
23 & 24 Vict. c. 59.	The Universities and College Estates Act Extension Act, 1860.	Section four.
50 & 51 Vict. c. 73.	The Copyhold Act, 1887 ..	The whole Act.

PART III.

AN APPENDIX

Of FORMS ; PRECEDENTS ; STATUTES, &c.

-
- (A) OFFICIAL FORMS.
(AA) NON-OFFICIAL FORMS.
(B) PRECEDENTS.
(C) STATUTES (ANCILLARY TO COPYHOLD ACT,
1894, OR OTHERWISE RELEVANT TO
ENFRANCHISEMENTS).
(D) THE CASE OF HUMPHREYS *v.* BLYTHER,
(1878), H., No. 771.
-

(A.) OFFICIAL FORMS.

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Compulsory Enfranchisement under the Copyhold Act, 1894.

(1.) *Notice from Lord or Tenant of desire for Enfranchisement of Copyholds.*

Manor of ———, in the county of ———.

I, ———, of ———, in the parish of ———, in the county of ———, do hereby, pursuant to the provisions of the Copyhold Act, 1894, give you notice of my desire that the lands copyhold of the above manor, to which* ——— admitted on or about the ——— day of ———, 18—, shall be enfranchised under the said act.

Dated this ——— day of, 19—.

———, [*Signature, stating whether lord or tenant.*]

To ———, of ——— [a tenant of the manor, or lord or steward of the manor].

NOTE.—A copy of this notice should be forwarded to the Secretary, Board of Agriculture, 3, St. James's Square, London, S.W., with an indorsement stating when and how the original notice was served.

* Insert "you were" or "I was."

Compulsory Enfranchisement under the Copyhold Act, 1894.

(2.) *Notice from Lord or Tenant of desire for extinguishment of Manorial Incidents and Enfranchisement.*

Manor of ———, in the county of ———.

I, ———, of ———, in the parish of ———, in the county of ———, do hereby, pursuant to the provisions of the Copyhold Act, 1894, give you notice of my desire that the* ———, or other manorial incidents to which the lands, freehold or customary freehold of the above manor, shortly described in the Schedule indorsed hereon, are liable, shall be extinguished, and the said lands be released therefrom, and enfranchised under the said act.

Dated this ——— day of ———, 19—.

———, [*Signature, stating whether lord or tenant.*]

To ———, of ——— [tenant of the said lands, or lord or steward of the manor].

THE SCHEDULE.

NOTE.—A copy of this notice should be forwarded to the Secretary, Board of Agriculture, 3, St. James's Square, London, S.W., with an indorsement stating when and how the original notice was served.

* Insert "heriot," "quit rents," or "free rents," as the case may be.

Compulsory Enfranchisement under the Copyhold Act, 1894.

(3.) *Agreement between Lord and Tenant that the Board of Agriculture shall determine the Compensation for Enfranchisement.*

Manor of ———, in the county of ———.

——— Enfranchisement.

We, ——— and ———, do hereby agree that the compensation for the enfranchisement of the lands comprised in the notice of desire for enfranchisement given by the said ———, dated on or about the ——— day of ———, 18—, * ——— the rights reserved by the Copyhold Act, 1894,

section 23, shall be determined by the Board of Agriculture pursuant to section 5 of the said act.

Dated this _____ day of _____, 19—.

_____, Lord or Steward.†

_____, Tenant.

* Including or not including.

† Steward may sign for lord, if reserved rights be not included; but if they are included, he cannot do so without special authority.

Compulsory Enfranchisement under the Copyhold Act, 1894.

(4.) *Joint Appointment of one Valuer by Lord and Tenant.*

Manor of _____, in the county of _____.

_____ Enfranchisement.

We, _____, of _____, in the county of _____, and _____, of _____, in the county of _____, do, in pursuance of the provisions of the Copyhold Act, 1894, hereby appoint _____, of _____, in the county of _____, to be the valuer, for the purpose of determining the compensation for the enfranchisement of the lands comprised in the notice of desire for enfranchisement given by the said _____, and dated on or about the _____ day of _____, 18—.

Dated this _____ day of _____, 19—.

_____, Lord of the above Manor.

_____, Tenant.

NOTE.—A copy of this appointment should be sent to the Secretary, Board of Agriculture, 3, St. James's Square, London, S. W.

Compulsory Enfranchisement under the Copyhold Act, 1894.

(5.) *Appointment of Valuer by Lord or Tenant.*

Manor of _____, in the county of _____.

_____ Enfranchisement.

I, _____, of _____, in the county of _____, do, in pursuance of the provisions of the Copyhold Act, 1894, hereby appoint _____, of _____, my valuer for the

purpose of determining the compensation for the enfranchisement of the lands comprised in the notice of desire for enfranchisement given by ———, and dated on or about the ——— day of ———, 18—.

Dated this ——— day of ———, 19—.

———, [*Signature, stating whether lord or tenant.*]

NOTE.—A copy of this appointment should be sent to the Secretary, Board of Agriculture, 3, St. James's Square, London, S.W.

Compulsory Enfranchisement under the Copyhold Act, 1894.

(6.) *Notice of Appointment of Valuer from Lord or Tenant, and calling on the other to appoint his Valuer.*

Manor of ———, in the county of ———.

——— Enfranchisement.

I, ———, of ———, in the county of ———, hereby give you notice that I have, in pursuance of the provisions of the Copyhold Act, 1894, appointed ———, of ———, my valuer for the purpose of determining the compensation for the enfranchisement of the lands comprised in the notice of desire for enfranchisement given by ———, and dated on or about the ——— day of ———, 18—; and I hereby call on you to appoint your valuer within twenty-eight days from the giving of this notice, being the time limited by the said act.

Dated this ——— day of ———, 19—.

———, [*Signature, stating whether lord or tenant.*]

To ———, of ——— [tenant or lord or steward of the manor].

NOTE.—A copy of this notice should be sent to the Secretary, Board of Agriculture, 3, St. James's Square, London, S.W., with an indorsement stating when and how the original notice was served.

Compulsory Enfranchisement under the Copyhold
Act, 1894.

(7.) *Appointment of Umpire by Valuers.*

Manor of ———, in the county of ———.
———— Enfranchisement.

We, the undersigned, being the valuers duly appointed
in the matter of this enfranchisement, hereby appoint
———, of ———, our umpire.

Dated this ——— day of ———, 19—.

NOTE.—A copy of this appointment should be sent to the
Secretary, Board of Agriculture, 3, St. James's Square,
London, S.W. If the valuers are unable to agree upon an
umpire within fourteen days of their appointment, application
should at once be made to the board to appoint an umpire for
them.

Compulsory Enfranchisement under the Copyhold
Act, 1894.

(8.) *Extension of Time.*

Manor of ———, in the county of ———.
———— Enfranchisement.

Whereas application has been made to the Board of
Agriculture to extend the time allowed by the Copyhold
Act, 1894, to the*———

Now, therefore, the Board of Agriculture, having duly
considered the grounds of the said application, do, by
virtue of the powers vested in them by the Copyhold Act,
1894, hereby extend the time within which &c. ——— to
the ——— day of ———, 19—.

In witness whereof the Board of Agriculture have
hereunto set their official seal, this ——— day of ———,
19—.

* Insert purpose of application.

Compulsory Enfranchisement under the Copyhold Act, 1894.

(9.) *Appointment of Valuer or Umpire by the Board of Agriculture.*

Manor of ———, in the county of ———.
———— Enfranchisement.

Whereas in the matter of the above enfranchisement under the Copyhold Act, 1894,* ——— failed to appoint ——— within the time allowed by the said act.

Now, therefore, the Board of Agriculture, in pursuance of the Copyhold Act, 1894, do hereby appoint† ——— to be the‡ ——— for the purpose of determining the compensation for the enfranchisement of the lands comprised in the notice of desire for enfranchisement given by ——— and dated on or about the ——— day of ———, 19—.

In witness whereof the Board of Agriculture have hereunto set their official seal this ——— day of ———, 19—.

* Recite tenant or lord failed to appoint a valuer; or, valuers failed to appoint an umpire.

† Insert name and address of person appointed.

‡ Valuer or umpire.

Compulsory Enfranchisement under the Copyhold Act, 1894.

(10.) *Decision of Valuer or Valuers.*

Manor of ———, in the county of ———.
———— Enfranchisement.

In the matter of the above enfranchisement under the Copyhold Act, 1894,* ———, of ———, in the county of ———, and† ———, of ———, in the county of ———, having been duly appointed to determine the compensation to be paid for the enfranchisement of the lands in the Schedule hereunder written and comprised in the notice of desire for enfranchisement given by ——— dated on or about the ——— day of ———, 19—, do hereby, in pursuance of the Copyhold Act, 1894, determine and decide as follows, that is to say:—

* ——— determine and decide that the compensation to be paid for the enfranchisement of the said lands under the said Act, is the sum of‡ ———, being the value of all

the manorial rights and incidents of tenure affecting the said lands, § ——— the rights reserved by section 23 of the said act, || ——— excepting the value of the right of escheat for want of heirs reserved by section 21 of the said act.

Witness ¶ ———, this ——— day of ———, one thousand nine hundred and ———.

[Signature of Valuer or Valuers.]

THE SCHEDULE hereinbefore referred to.

[The court roll description by which the tenant was admitted or enrolled should be given in the schedule; and, in addition, the modern description of the parcels, if such a description be agreed upon.

The Schedule as well as the decision should be signed by the valuer or valuers.

The declaration of each valuer should be annexed, and also the consent of the lord when the rights reserved by the Copyhold Act, 1894, section 23, are included.

The decision should be forwarded to the Secretary, Board of Agriculture, 3, St. James's Square, London, S.W., and a copy should be sent to the steward, and to the tenant or his solicitor, and the board should be informed that this has been done when the decision is sent in.]

* I, or We.

† Insert name and address of valuer or valuers.

‡ The compensation determined to be a gross sum of money.

§ Excepting or including.

|| And or but.

¶ My hand or our hands.

Compulsory Enfranchisement under the Copyhold Act, 1894.

(11.) *Decision of Umpire.*

Manor of ———, in the county of ———.
———— Enfranchisement.

Whereas in the matter of the above enfranchisement under the Copyhold Act, 1894, the valuers duly appointed have failed to make their decision.

And whereas, I, ———, of ———, in the county of ———, have been duly appointed the umpire in the said matter, which has been duly referred to me.

Now, therefore, in pursuance of the Copyhold Act, 1894, I do hereby determine and decide that the compensation to be paid for the enfranchisement under the said act, of the lands in the Schedule hereunder written and comprised in the notice of desire for enfranchisement given by ———, dated on or about the ——— day of ———, 19—, is the sum of ———, being the value of all the manorial rights and incidents of tenure affecting the said lands, * ——— the rights reserved by section 23 of the said act, † ——— excepting the value of the right of escheat for want of heirs reserved by section 21 of the said act.

The compensation determined to be a gross sum of money.

Witness my hand this ——— day of ———, one thousand nine hundred and ———.

———, [Signature].

THE SCHEDULE hereinbefore referred to.

[The court-roll description by which the tenant was admitted or enrolled should be given in the Schedule, and, in addition, the modern description of the parcels, if such a description be agreed upon.

The Schedule as well as the decision should be signed by the umpire.

The declaration of the umpire must be annexed, and also the consent of the lord when the rights reserved by the Copyhold Act, 1894, section 23, are included.

The decision should be forwarded to the Secretary, Board of Agriculture, 3, St. James's Square, London, S.W., and a copy should be sent to the steward, and to the tenant, or his solicitor, and the board should be informed that this has been done when the decision is sent in.]

* Excepting or including.

† And or but.

Compulsory Enfranchisement under the Copyhold Act, 1894.

(12.) *Determination of the Board of Agriculture.*

Manor of ———, in the county of ———.

——— Enfranchisement.

Whereas in the matter of the above enfranchisement under the Copyhold Act, 1894, * ———.

Now therefore the Board of Agriculture do by virtue

B.C.

C C

of the powers vested in them by the Copyhold Act, 1894, hereby determine and decide that the compensation to be paid for the enfranchisement of the lands comprised in the notice of desire for enfranchisement given by —, and dated on or about the — day of —, one thousand nine hundred and —, which said lands are described in the Schedule hereto, is the sum of —, being the value of all the manorial and other rights and incidents affecting the said lands, + — the rights reserved by section 23 of the said Act, † — excepting the value of the right of escheat for want of heirs reserved by section 21 of the said act.

In witness whereof, the Board of Agriculture have hereunto set their official seal, this — day of —, one thousand nine hundred and —.

THE SCHEDULE hereinbefore referred to.

* State reason showing power of board to decide.

† Excepting or including.

‡ And or but.

Enfranchisement under the Copyhold Act, 1894.

(13.) *Receipt for Compensation Money.*

Manor of —, in the county of —.

— Enfranchisement.

Received on the — day of —, 19—, of and from —, the sum of —, being the compensation money for the enfranchisement under the Copyhold Act, 1894, of certain lands comprised in the notice of desire for enfranchisement given by —, and dated on or about the — day of —, 19—.

Witness —.

NOTE.—The receipt must be dated, and the usual receipt stamp must be affixed and duly cancelled.

Enfranchisement under the Copyhold Act, 1894.

(14.) *Declaration as to Lord's Title.*

Manor of —, in the county of —.

I, —, of —, in the county of —, the * — of the said manor, do solemnly declare as follows:

That — [lord] is [seised†] —.

NOTE.—
This
declaration
must be
impressed
with a
2s. 6d.
stamp.

And that the said ——— is now and has for ——— years past been the acting lord of the said manor; and that the name and style of the court baron and customary court of the said manor are “The General Court Baron and Customary Court of the Manor of ———, in the County of ———;” and that the last general court baron and customary court was held in and for the said manor, by ——— as steward, in the name of the said ———, as lord of the said manor, on the ——— day of ———, 19—.

And that the said manor is subject to †———.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

The said ——— declared to the truth of the above declaration at ———, in the said county of ———, the ——— day of ———, 19—.

Before me, ———

* Lord or steward.

† Here describe the nature and extent of the estate and interest of the lord in the manor, and the date, and short particulars of the deed, will, or other instrument under which he claims or derives title. And if the lord be not seised in fee, give the names, addresses, and descriptions in full of the acting trustees of the will or settlement under which the manor is held. Or state that there are no such trustees.

‡ State here the nature and extent of the incumbrances (if any) which affect the manor, or that there are no incumbrances.

Enfranchisement under the Copyhold Act, 1894.

(15.) *Certificate of Title.**

Manor of ———, in the county of ———.

The Board of Agriculture, in virtue of the powers vested in them by the Copyhold Act, 1894, do, for the purpose of enfranchisement under the said Act, hereby certify that on the ——— day of ——— they approved of the title of ——— as lord of the above manor.

In witness whereof the Board of Agriculture have hereunto set their official seal this ——— day of ———, 18—.

* Now disused.

Enfranchisement under the Copyhold Act, 1894.

(16.) *Appointment of Trustees.*

Manor of ———, in the county of ———.

Whereas it is proposed to effect enfranchisements under the Copyhold Act, 1894, of lands held of the above manor, of which ——— is lord.

*State
reasons for
appoint-
ment.

*

And whereas it is expedient that fit and proper persons should be nominated for the purpose of receiving any moneys to be paid for the enfranchisement of lands held of the above manor.

And whereas, having made due inquiry, it appears to the Board of Agriculture that ——— are fit and proper persons to be so nominated.

Now the Board of Agriculture, in pursuance of the powers vested in them by the Copyhold Act, 1894, do hereby nominate and appoint the said ——— to be trustees for the purpose of receiving any moneys to be paid for the enfranchisement, under the said act, of lands held of the above manor in trust to be applied by them as directed by the said act.

In witness whereof the Board of Agriculture have hereunto set their official seal this ——— day of ———, one thousand nine hundred and ———.

Compulsory Enfranchisement under the Copyhold Act, 1894.

(17.) *Consent of Lord to include Reserved Rights.*

Manor of ———, in the county of ———.

——— Enfranchisement.

I, ———, of ———, the lord of the above manor, do hereby consent that the enfranchisement under the Copyhold Act, 1894, of the lands comprised in the notice of desire for enfranchisement given by ———, and dated on or about the ——— day of ———, 19—, shall extend to and include all mines and minerals, and also all other rights and easements reserved by section 23 of the said act.

Dated this ——— day of ———, 19—.

NOTE.—The steward cannot sign this consent for the lord without special authority.

Voluntary Enfranchisement under the Copyhold
Act, 1894.

(18.) *Notice to Person entitled to the next Estate of
Inheritance in Remainder or Reversion in the
Manor.**

Manor of ———, in the county of ———.
———— Enfranchisement.

I, ———, of ———, in the county of ———, lord of the above manor, do hereby, in pursuance of the provisions of the Copyhold Act, 1894, give you notice, that it is intended to enfranchise all that ———, to which the said ——— was admitted tenant on or about the ——— day of ———, 18—, and that the compensation for such enfranchisement being the sum of ——— is to be paid to ——— pursuant to the provisions of the said act.

And I request that you will state in writing at the foot hereof your † ——— such enfranchisement, and return the same for delivery to the Secretary, Board of Agriculture, 3, St. James's Square, London, S.W., under the said act.

Dated this ——— day of ———, 19—.

———— the person entitled to the next estate of ——— inheritance in remainder or in the above manor.

I, the said ———, do hereby † ——— the enfranchisement above proposed.

* If such person be a minor, notice must be given to his guardian.

† Assent to, or dissent from.

Compulsory Enfranchisement under the Copyhold
Act, 1894.

(19.) *Award of Enfranchisement.*

Whereas the lands described in the Schedule hereto are held by copy of court roll of the manor of ———, in the county of ———, and ——— is the tenant upon the court roll of the said lands.

And whereas the enfranchisement of the said lands has been duly required according to the provisions of the Copyhold Act, 1894.

* "Have"
or "have
not," as
the case
may be.

And whereas the lord and the tenant *—— consented that the rights mentioned in sect. 23 of the Act shall be affected by such enfranchisement.

And whereas the amount to be paid for such enfranchisement has been ascertained according to the provisions of the said act, to be the sum of £——, which has been duly paid, and the receipt for the same has been produced to the Board of Agriculture.

And whereas all other acts and matters required by the said act previously to the confirmation of this award of enfranchisement have been duly done and performed.

* Omit, if
consent
not given.

Now the Board of Agriculture, in pursuance of the powers vested in them by the Copyhold Act, 1894, do, by this award of enfranchisement, enfranchise all the said copyhold lands described in the Schedule hereto, with their appurtenances, *[including any such rights as are mentioned in section 23 of the said act] to be holden, as freehold, henceforth and for ever discharged from all fines, heriots, reliefs, quit rents, and all other incidents whatsoever of copyhold or customary tenure, but so as not to affect such right of escheat for want of heirs as is reserved by section 21 of the said act †[or any such rights as are excepted by section 23 thereof.]

† Omit, if
minerals,
&c., are
included.

In witness and confirmation whereof, the Board of Agriculture have hereunto set their official seal this —— day of ——, one thousand nine hundred and ——.

THE SCHEDULE hereinbefore referred to.

Compulsory Enfranchisement under the Copyhold Act, 1894.

(20.) *Award of Enfranchisement.*

Whereas the lands described in the Schedule hereto are held by copy of court roll of the manor of ——, in the county of ——, and —— is the tenant upon the court roll of the said lands.

And whereas the enfranchisement of the said lands has been duly required according to the provisions of the Copyhold Act, 1894.

* If re-
served
rights to be
included,
recite
lord's
consent.

*
And whereas the compensation for such enfranchisement has been ascertained, according to the provisions of the said act, to be an annual rentcharge of £—— issuing out of the said lands.

And whereas all other acts and matters required by the said act previously to the confirmation of this award of enfranchisement have been duly done and performed.

Now the Board of Agriculture, in pursuance of the powers vested in them by the Copyhold Act, 1894, do, by this award of enfranchisement, enfranchise all the said copyhold lands described in the Schedule hereto, with their appurtenances, * — the rights reserved by section 23 of the said act, to be holden, subject to the payment of the said annual rentcharge, as freehold, henceforth and for ever discharged from all fines, heriots, reliefs, quit rents, and all other incidents whatsoever of copyhold or customary tenure, † —, but so as not to affect such right of escheat for want of heirs as is reserved by section 21 of the said act.

In witness and confirmation whereof, the Board of Agriculture have hereunto set their official seal this — day of —, one thousand nine hundred and —.

THE SCHEDULE hereinbefore referred to.

* Excepting or including.

† If minerals excepted, insert "except as aforesaid."

Compulsory Enfranchisement under the Copyhold Act, 1894.

(21.) *Award of Enfranchisement.*

Whereas the lands described in the Schedule hereto are freehold or customary freehold of the manor of —, in the county of —, liable to certain * — and other manorial incidents, and —, of —, is the tenant of the said lands.

And whereas it has been duly required that the said * — and other manorial incidents should be extinguished, and the said lands released and enfranchised therefrom, according to the provisions of the Copyhold Act, 1894.

And whereas the compensation to be paid for such extinguishment, release, and enfranchisement has been ascertained, according to the provisions of the said act, to be the sum of £ —, which has been duly paid, and the receipt for the same has been produced to the Board of Agriculture.

And whereas all other acts and matters required by the said act previously to the confirmation of this award of enfranchisement have been duly done and performed.

Now the Board of Agriculture, in pursuance of the powers vested in them by the Copyhold Act, 1894, do, by this award, extinguish all the said * ——— and all other manorial incidents in which the lands described in the Schedule hereto are liable, and release and enfranchise the said lands therefrom, but so as not to affect such right of escheat for want of heirs as is reserved by section 21 of the said act.

In witness and confirmation whereof, the Board of Agriculture have hereunto set their official seal this ——— day of ———, one thousand nine hundred and ———.

THE SCHEDULE hereinbefore referred to.

* *Insert "heriots," "quit rents," or "free rents," as the case may be.*

Voluntary Enfranchisement under the Copyhold Act, 1894.

(22.) *Deed of Enfranchisement.*

This indenture, made the ——— day of ———, 19——, between A. B., lord of the manor of ———, of the first part, the Board of Agriculture of the second part, and C. D., of ———, in the county of ———, a tenant of the said manor, of the third part: Whereas on or about the ——— day of ——— the said [tenant] was admitted tenant to the copyhold hereditaments parcel of the said manor described in the Schedule hereto, upon an absolute surrender passed to his use by ——— [*or by virtue of a bargain and sale from the executors of ———, or by virtue of the last will and testament of ———, or as customary heir of ———, as the case may be*]: And whereas the said [lord] has, under the authority of the Copyhold Act, 1894, agreed with the said [tenant] for the enfranchisement of the said hereditaments, at the sum of ———: Now this indenture witnesseth, that in consideration of the said sum of ——— sterling by the said [tenant] to the said ——— now paid, the receipt of which the said ——— hereby acknowledges, he the said ———, in exercise of any power given him by the Copyhold Act,

1894, or any other power whatsoever, and with the consent of the Board of Agriculture in pursuance of the powers vested in them by the said act, hereby enfranchises and releases unto the said [tenant] his heirs and assigns, all and singular the hereditaments to which the said [tenant] was so admitted tenant as hereinbefore recited, and which are described in the Schedule hereto, together with their appurtenances * — the rights reserved by section 23 of the said act. To hold the said hereditaments hereby enfranchised unto and to the use of the said [tenant], his heirs and assigns, as freehold, henceforth and for ever, discharged by these presents from all fines, heriots, quit rents, and all other incidents whatsoever of copyhold or customary tenure, but so as not to affect such right of escheat for want of heirs as is reserved by section 21 of the said act. In witness whereof the said parties of the first and third parts have set their hands and seals, and the Board of Agriculture have hereunto set their official seal.

THE SCHEDULE.

* Including *or* excepting.

Voluntary Enfranchisement under the Copyhold Act, 1894.

(23.) *Deed of Enfranchisement.*

This indenture, made the — day of —, 19—, between A. B., lord of the manor of —, of the first part, the Board of Agriculture of the second part, and C. D., of —, in the county of —, of the third part: Whereas the hereditaments described in the Schedule hereto are freehold or customary freehold of the said manor liable to * — and other manorial incidents, and the said — is the tenant of the said hereditaments. And whereas the said [lord] has under the authority of the Copyhold Act, 1894, agreed with the said [tenant] that the said * — and other manorial incidents should be extinguished, and the said hereditaments released and enfranchised therefrom, at the sum of —. Now this indenture witnesseth, that in consideration of the said sum of — sterling by the said [tenant] to the said — now paid, the receipt of which the said — hereby acknowledges, he the said —, in exercise of

any power given him by the Copyhold Act, 1894, or any other power whatsoever, and with the consent of the Board of Agriculture in pursuance of the powers vested in them by the said act, hereby extinguishes all the said *—— and all other manorial incidents, and releases and enfranchises unto the said [tenant], his heirs and assigns, all the said hereditaments described in the Schedule hereto, together with their appurtenances. To hold the said hereditaments unto and to the use of the said [tenant], his heirs and assigns, as freehold, henceforth and for ever, discharged by these presents from the said *—— and all other manorial incidents whatsoever, but so as not to affect such right of escheat for want of heirs as is reserved by section 21 of the said act. In witness whereof the said parties of the first and third parts have set their hands and seals, and the said Board of Agriculture have hereunto set their official seal.

THE SCHEDULE.

* Insert "heriots," "quit rents," or "free rents," as the case may be.

Enfranchisement under the Copyhold Act, 1894.

(24.) *Information to be furnished to the Board of Agriculture in every Case of Enfranchisement under the said Act.*

Manor of ———, parish of ———, county of ———.
 ——— Enfranchisement.

PART I.—Information to be furnished to the Board of Agriculture in every Enfranchisement.

1. The lands to be enfranchised should be described in the Schedule on page 4 hereof
2. Name in full, and address of the lord
3. Is the lord seised in fee simple, fee tail, for life, or how otherwise; and if he is not seised in fee simple, who is entitled to the next estate of inheritance in remainder or reversion in the manor?
4. How is the compensation money proposed to be paid?
 To the lord?

- To trustees acting under the will or settlement under which the lord derives his estate or interest in the manor? If so, give names, addresses, and descriptions . . .
- To trustees to be nominated by the Board of Agriculture if there be no trustees acting under the will or settlement, or if the lords be a corporation? . . .
- Into the High Court *ex parte* the Board of Agriculture? . . .
- To the account of the Board of Agriculture, *ex parte* Universities and College Estates? (See the Universities and College Estates Act, 1898, s. 6.) . . .
- To the Church Estates Commissioners? . . .
- To the Governors of Queen Anne's Bounty? . . .
- To the official trustees of Charitable funds? . . .
5. Is the manor incumbered? If so, state the nature of the incumbrance or incumbrances, and the names and addresses of the person or persons entitled thereto. . . .
 6. Name in full and address, and profession or calling of the tenant . . .
 7. Date of admittance of the tenant, [and estate for which he was admitted (whether for his life or in fee or otherwise, and whether to the entirety, or to an undivided share)] . . .
 8. Has notice of compulsory enfranchisement been given under the Copyhold Act, 1894? . . .
 9. Is the property copyhold or freehold of the manor? . . .
 10. If copyhold, is it of inheritance or for lives? . . .
 11. If for lives: (a) the names and ages of the lives; and (b) has the tenant a right of renewal? . . .
 12. The amount of compensation for the enfranchisement, if it has been settled by agreement . . .

13. Age of the tenant
14. (a) Is the property subject to any and what fines certain, or fines arbitrary or reliefs ?
(b) If the fines are arbitrary, is there, by the custom of the manor, any and what difference between the amounts of the fines on death and on alienation respectively ?
15. The amount of the last fine or relief, and whether paid in consequence of death or of alienation
16. To what quit or free rents is the property subject ?
17. Is the property subject to heriots ? If so, state the nature and number of the heriots, the circumstances in which they are payable, and whether seizable as well without as within the manor, and the nature and value of the last three heriots taken
18. Does the ordinary law of copyholds apply with respect to the timber and minerals, or is there any and what special custom of the manor with respect thereto ?
19. Has the tenant power to demise the property ? If so, for what period ?
20. Has the lord granted licences to demise in the manor ? If so, on what terms ?
21. (a) Does the lord claim any of the rights mentioned in s. 23 of the Copyhold Act, 1894 ?
(b) If so, is it proposed to extinguish these rights ?
22. Has the land present or prospective building value, or any other facilities for improvements ?
23. Are there any special advantages to arise from the enfranchisement which should be taken into account in ascertaining the compensation ?

Dated this _____ day of _____, 19____.
 _____, Steward of the Manor.
 _____, Address.

SCHEDULE of the lands to be enfranchised.

[The court roll description by which the tenant was admitted or enrolled to be given in the Schedule; and in addition the modern description of the parcels, if such a description be agreed upon and is desired to be inserted in the award or deed of enfranchisement.]

To be signed by lord or steward* and tenant, when the compensation is settled by agreement.

We do hereby agree that the compensation for the enfranchisement of the lands above mentioned †—— the rights reserved by the Copyhold Act, 1894, s. 23, shall be †——.

Dated this —— day of ——, 190—.

——, Lord or Steward.

——, Tenant.

* Steward may sign for lord if reserved rights be not included, but if they are included he cannot do so without special authority.

† Including, or not including. Cross out reference to reserved rights if they do not belong to the lord.

‡ A gross sum of £—— or an annual rentcharge of £——

Compulsory Enfranchisement under the Copyhold Act, 1894.

(25.) *Minute of the Board of Agriculture as to Proceedings on Compulsory Enfranchisements under the Copyhold Act, 1894.*

1. *Lord or tenant can compel enfranchisement of copyhold.*]
—A lord or tenant can compel enfranchisement of any copyhold land to which the tenant has been admitted, unless the tenant is a mortgagee not in possession, or the land is held for a life or lives, or for years, where the tenant has not a right of renewal. But where the tenant has not been admitted since the 30th of June, 1853, he cannot avail himself of this power until after payment or tender of such fine, and of the value of such heriot (if any), as would become payable in the event of admittance on alienation subsequent to that day, and of two-thirds of such sum as the steward would have been entitled to in respect of the admittance.

2. *Lord or tenant can compel enfranchisement of any manorial incident.*—Any lord or tenant of any land liable to any heriot, quit rent, free rent, or other manorial incident whatsoever, may require and compel the extinguishment of such rights or incidents affecting the land, and the release and enfranchisement of the land subject thereto, and the proceedings thereon shall be the same as in the case of enfranchisement of copyhold land. If the land is freehold (including customary freehold) and subject to heriots and no heriot has become due or payable since the 30th of June, 1853, a tenant cannot avail himself of this power until after payment or tender of the value of such heriot (if any) as would become payable in the event of an admittance or enrolment on alienation subsequent to that day, and of two-thirds of such sum as the steward would have been entitled to for fees in respect of the alienation or admittance or enrolment.

3. *Fines and fees on admittance to be paid before enfranchisement.*—A tenant shall not be entitled to require enfranchisement of any land until after payment or tender of all fines and fees consequent on the last admittance to the land.

4. *Notice of desire to enfranchise.*—A lord or tenant requiring enfranchisement or extinguishment of a manorial incident, must give notice in writing thereof the one to the other, and send a copy of the notice to the board, with an endorsement thereon, stating when and upon whom the notice was served, and how served.

5. *Lord and tenant may agree as to compensation.*—The lord and tenant, after notice of the enfranchisement has been delivered, may agree in writing upon the compensation to be paid for enfranchisement. A form, showing the information to be furnished by the steward in such cases, may be obtained on application to the board. A memorandum of agreement will be found at the foot of page 4 of the form.

6. *Lord and tenant may agree to refer determination of compensation to the board, or a valuer or valuers.*—The lord and tenant may, after notice of the enfranchisement has been delivered, agree in writing that the board shall determine the compensation to be paid for enfranchisement, or they may appoint a valuer or valuers to determine such compensation. Forms of agreement or appointment applicable to such cases may be obtained on application to the board.

7. *Appointment of valuers.*—If the compensation is not otherwise determined, it shall be ascertained under the

direction of the board on a valuation to be made by a valuer, valuers, or umpire, duly appointed in manner following, that is to say :—

Joint appointment of valuer.]—The lord and tenant may, in any case, jointly appoint one valuer.

Appointment of valuer by justices.]—When the manorial rights to be compensated consist only of heriots, rents, and licences at fixed rates to demise or to fell timber, or of any of these, or where the land to be enfranchised is not rated for the relief of the poor at a greater amount than the net annual value of 30/., the valuation shall be made by a valuer to be appointed by the justices at petty sessions holden for the division or place in which the manor or the greater part of it is situate, unless either party to the enfranchisement gives notice that he desires the valuation to be made by a valuer or valuers appointed by the lord and tenant, in which case he shall pay the additional expenses caused by that mode of valuation. Before either party applies to the justices to appoint a valuer, he must give notice of his intention to the other party, and a copy of the notice, as well as of any appointment by the justices, should be forwarded to the board.

Appointment of separate valuers by lord and tenant.]—In all other cases, the person who has given notice of his desire to enfranchise should appoint a valuer in writing, and give notice thereof to the other party requiring him to appoint his valuer. A copy of the valuer's appointment and of the notice should be sent to the board, with the time and mode of service of the notice endorsed thereon.

When the notice of the appointment of valuer has been received, the party on whom it has been served must within twenty-eight days appoint his valuer, and send a copy of the appointment both to the opposite party and to the board.

Failure by lord or tenant to appoint a valuer.]—In any case where after due notice as aforesaid either party shall neglect or refuse for twenty-eight days or within such further time, if any, as the board may by order allow, to appoint his valuer, the appointment devolves upon the board, who, on being requested by either party, will appoint a valuer.

8. *Appointment of umpire.*]—The valuers, within fourteen days after their appointment, and before they proceed, should appoint an umpire, to whom the whole

matter, or any point in dispute between them, may be referred. A copy of such appointment should be forwarded to the board. If the valuers fail to appoint within fourteen days, the appointment devolves upon the board, who, on being requested by the valuers, or one of them, will appoint an umpire.

9. *Death or removal of a valuer or umpire.*—When a valuer or umpire dies, or becomes incapable, or refuses to act, or is removed by the board, another valuer or umpire may be appointed in his place, within a time to be fixed by the board, by the person and in the manner provided by the act with regard to the valuer or umpire in whose place he is appointed, and in default by the board. A valuer or umpire so appointed may adopt and act upon any valuation or proceeding agreed on or completed by the valuer, valuers, or umpire previously acting.

10. *Declaration of valuers or umpire.*—Before any valuer or umpire shall enter upon his valuation, he must, in the presence of a justice of the peace, make and subscribe a declaration in the following form, which should be annexed to the decision when forwarded to the board:—

“I, ———, declare that I will faithfully, to the best of my ability, value, hear, and determine the matters referred to me under the Copyhold Act, 1894.

Made and subscribed in the presence of ———, A.B.,
———, this ——— day of ———, 19—.”

11. *Instructions to be given to valuers.*—As the decision of the valuers should be given within forty-two days, each party should, without delay, furnish his valuer with a description of the lands to be enfranchised and all other necessary information; but if either party neglect or refuse to do so, the valuers will proceed upon such information as they can otherwise obtain.

12. *Circumstances to be considered by valuers.*—The circumstances to be considered by valuers are mentioned in section 6 of the act, which is as follows:—

“(1.) In making a valuation for the purpose of ascertaining the compensation for a compulsory enfranchisement under this act, the valuers shall take into account and make due allowance for the facilities for improvements, customs of the manor, fines, heriots, reliefs, quit rents, chief rents, forfeitures, and all other incidents whatsoever of copyhold or customary tenure, and all other circumstances affecting or relating to the

land included in the enfranchisement, and all advantages to arise therefrom, provided that they shall not take into account or allow for the value of escheats.

- “(2.) The value of the matters to be taken into account in the valuation shall be calculated as at the date of the notice to enfranchise.”

13. *Decision of valuers or umpire.*—The valuers must determine the value of the matters to be taken into account in the valuations at a gross sum of money.* The valuers' decision must be in such form as the board direct, and be forwarded to the board within forty-two days after their appointment or within such further time (if any) as the board by order allow, with the details of the valuation separately given. A copy of the decision must also be sent at the same time to the lord or steward and to the tenant or his attorney. If the valuers are unable from any cause to come to a decision within the prescribed time, they or either of them may, before the expiration of that period, refer the matter to the umpire. If they fail to do so, the board may direct the umpire to act as valuer. In either case it will be the duty of the umpire to make the decision, and furnish details and copies of the same as before mentioned within forty-two days after the reference to him.

14. *Extension of time.*—If any extension of time for doing an act should be desired, application should be made to the board before the expiration of the prescribed period.

15. *Description of land to be enfranchised.*—A Schedule containing the exact description under which the land is to be enfranchised should be annexed to every decision. The court-roll description by which the tenant was admitted or enrolled should be given in the Schedule. If, however, the parties agree to a more modern description of the land in addition to the court-roll description, the same should be signed by the steward of the manor and by the tenant or his attorney.

16. *Identity of land.*—When the identity of the land cannot be ascertained to the satisfaction of the valuers, it is to be taken at the quantity (if any) in statute measure mentioned in the court rolls, and if not so specified the quantity is to be determined by the valuers.

* See paragraph 32 as to scale on which compensation should be based.

Plans.—When the land is not defined by a plan on the court rolls, the valuers, if requested in writing by either lord or tenant, are to define the land by a plan. The ordnance survey map, or a tracing from it, will generally be found most convenient for the purpose. Ordnance survey maps on the $\frac{1}{2500}$ and 6-inch scales, and larger scales for town properties, can be obtained from Mr. Stanford, 26 and 27, Cockspur Street, Charing Cross, London, S.W., who will afford full information respecting them.

Except by agreement between the lord and tenant, a plan is not to be made in any case in which it shall appear by the court rolls or otherwise that the boundaries of the land have been for more than fifty years last past treated as being intermixed with the boundaries of other lands, and as being incapable of definition.

When valuers have been appointed, a lord or tenant may, in any case of doubt or difference of opinion as to the identity of the land, apply to the board to ascertain and define the boundaries thereof.

17. *Minerals and other reserved rights.*—No enfranchisement will extend to or affect the estate or rights of any lord or tenant in any of the mineral or other rights mentioned in section 23 of the act, without his express consent in writing. Therefore, when the tenant desires and the lord is willing to include and extinguish such rights of the lord, the lord's consent must be sent to the valuers before they enter upon their valuation, in order that they may include the rights in their decision. A form of consent may be obtained from the board, and the signed consent should be forwarded to them with the decision.

18. *Board prepare award of enfranchisement.*—When the compensation has been ascertained under the provisions of the act, the board, having made such inquiries as they think proper, and having considered any applications made to them by the parties, may make, in such form as they provide, an award of enfranchisement on the basis of the compensation, and the award will be prepared by them.

19. *Board to continue conditions of user for benefit of public or other tenants.*—The board have power under section 13 of the act by the award of enfranchisement to continue and give effect to any condition affecting the user of the land subject to which the tenant may have been admitted and which may have been imposed for the benefit of the public or of the other tenants of the manor,

where, in the opinion of the board, some special hardship or injustice would result if the land were released from the condition.

20. *When compensation to be a rentcharge.*—Where the enfranchisement is at the instance of the lord, or where the land can, in the opinion of the board, be sufficiently identified, and the compensation amounts to more than one year's improved value of the land, then, unless the parties otherwise agree, or the tenant exercises the option hereafter mentioned, the compensation shall be an annual rentcharge of 4*l.* per cent. per annum on the amount of the compensation, commencing from the date of the notice to enfranchise, and issuing out of the land enfranchised.

The rentcharges are payable on the 1st of January and the 1st of July in each year, but are redeemable by the person for the time being in actual possession or in receipt of the rents and profits of the land, on payment of twenty-five times the amount of the rentcharge.

Compensation may be a gross sum at option of tenant.—The tenant has the option, in all cases, of paying the compensation in a gross sum of money; but in case of enfranchisement by award, he must within ten days after the receipt of the draft award give notice, in writing to the board of his desire so to pay.

21. *Compensation to be paid prior to confirmation of award.*—When the compensation for enfranchisement is a gross sum of money, the receipt of the person entitled to receive the same must be produced to the board before the enfranchisement award can be confirmed.

22. *Questions of law or fact.*—If any questions of law or fact arise in the course of the valuation on any compulsory enfranchisement, they may be referred to the board.

23. *Proceedings not to abate in case of death of lord or tenant.*—If pending any proceedings the lord or tenant shall die, there shall be no abatement of the proceedings, and any admittance or enrolment consequent on such death must be made without the payment of any fine, relief, or heriot, and the compensation must be ascertained as if the enfranchisement had been effected immediately after the commencement of the proceedings.

24. *Who may act for lord.*—Any lord may act either on his own behalf, or by his steward, or may appoint an agent other than his steward to act for him, but unless and until he has given written notice to a tenant and the board respectively that he intends to act on his own

behalf, or that he has appointed an agent (to be named in the notice) other than his steward, to act for him, the steward shall, for the purposes of the act, represent the lord in all matters of procedure, and the tenant and the board may treat the steward as the agent of the lord for the purpose of giving and receiving notices, making agreements, and all other matters relating to enfranchisement; except that no steward shall, without special authority, have power to consent on behalf of the lord to the rights comprised in section 23 of the act being affected by the enfranchisement.

25. *When lords or tenants are trustees.*—When either the lords or the tenants are trustees, and one or more of the trustees is abroad or is incapable or refuses to act, any proceedings necessary to be done by the trustees for effecting an enfranchisement under the act may be done by the other trustee or trustees.

26. *Married women.*—A married woman being lady of a manor or tenant shall, for the purposes of the act, be deemed to be a feme sole.

27. *Persons under disability or beyond the seas.*—Where a lord or tenant or any person interested in an enfranchisement or otherwise under the act is an infant or a lunatic, or is abroad, or is unknown or not ascertained, anything by the act required or authorised to be done by or in respect of him shall be done on his behalf, if he is an infant and has a guardian, by his guardian, and if he is a lunatic and there is a committee of his estate, by the committee, and if he is abroad and has an attorney authorised in that behalf, by his attorney, and in every other case by some fit person appointed by the board to represent him for the purposes of the Act.

28. *Appointment of agent by power of attorney.*—An agent or attorney may be appointed by power of attorney by a lord or tenant, or other person interested in any proceedings under the act, in the following form:—

“Manor of ———, in the county of ———.

I, A.B., of, &c., hereby appoint C.D., of, &c., to be my lawful attorney to act for me in all respects as if I myself were present and acting in the execution of the Copyhold Act, 1894.

Dated the ——— day of ———, one thousand nine hundred and ———.

(Signed) A.B.”

The power of attorney must be in writing, and be signed by the person giving it, or, if it is given by a

corporation aggregate, be sealed or stamped with the seal of the corporation.

The power of attorney, or a copy authenticated by two witnesses, must be sent to the board.

29. *Notices, agreements, and appointments to be duly signed.*—Every notice, agreement, or appointment of valuer by the lord must be signed by him or his agent or by the steward, or if given, or made, by the tenant, must be signed by him, or by an agent duly authorised by power of attorney to act on his behalf.

30. *Service of notices.*—A notice required or authorised by the act to be given to any person must be given in writing, and may be served personally or by leaving it at the usual or last known place of abode or business in the United Kingdom, or by sending it by post in a registered letter addressed to him at that place, or where he is a tenant of any premises by delivering the same, or a true copy of it, to some person on the premises, or if there is no person on the premises to whom it can be delivered, by fixing it on some conspicuous part of the premises.

31. *Copies of notice and other documents to be sent to the board.*—Copies of all notices and appointments should be sent to the board as soon as they are given or made.

32. *Scales of compensation and of allowance to valuers.*—A scale of compensation for enfranchisement and a scale of allowance to valuers, framed pursuant to section 66 of the act, for guidance, may be obtained on application to the board. The person requiring an enfranchisement should state to the other party to the enfranchisement whether he is or is not willing to adopt the scale of compensation.

The scale of compensation will probably facilitate the settlement by agreement of the sum to be paid, especially in fine certain cases, in which the compensation is usually of small amount.

33. *Steward's compensation.*—The compensation to be paid by a tenant to the steward, in every case of compulsory enfranchisement, is fixed by section 9 of the act.

34. *Exemption from stamp duty.*—Agreements, decisions of valuers, and powers of attorney under the act are not chargeable with stamp duty.

35. *Expenses.*—In case of any question as to the amount of the expenses relating to an enfranchisement, the matter may be referred to the board.

36. *Forms.*—The under-mentioned forms may be obtained by application to the board, or if a number be

required, to Messrs. Shaw & Sons, Fetter Lane, London, E.C.

Notice from lord or tenant, of desire for enfranchisement.

Notice from lord or tenant, of desire for extinguishment of manorial incidents, and enfranchisement.

Information to be furnished to the board in every case of enfranchisement under the Copyhold Act, 1894, with agreement as to compensation between lord and tenant, when they agree.

Agreement between lord and tenant that the board shall determine the compensation for enfranchisement.

Joint appointment of one valuer by lord and tenant.

Appointment of valuer by lord or tenant.

Notice of appointment of valuer from lord or tenant, and calling on the other to appoint his valuer.

Appointment of umpire by valuers.

Consent of lord to include reserved rights.

Decision of valuer or valuers.

Decision of umpire.

Declaration as to lord's title.

Receipt for compensation money.

Board of Agriculture,
3, St. James's Square,
London, S.W.

Copyhold Enfranchisement.

(26.) *Scale of Compensation in ordinary cases of Enfranchisement of Copyholds of Inheritance, framed pursuant to section 66 of the Copyhold Act, 1894.*

1. *Fine arbitrary cases.*—In fine arbitrary cases when a fine is payable on alienation by, as well as on the death of, a tenant, the compensation for fines should not exceed the number of years' annual value of the property according to the age of the tenant as set forth in the table hereto annexed.

2. The table is calculated on the principle that a fine of two years' annual value is payable on each change of tenancy; therefore, in those manors in which the customary fine on alienation by, or on the death of, a

tenant is less than two years' annual value, a proportionate reduction should be made in the amount of the compensation.

3. In estimating the annual value of the property, no deduction should be made for land tax, but the quit rent should be deducted, and, where there are buildings, allowance should be made for keeping the buildings in repair. The gross annual value of the land for the poor rate assessment may be used, when applicable, as the basis for ascertaining the annual value.

4. When there are facilities for improvement or the land has present or prospective building value, one twenty-fifth part of the fee simple value may be taken as the annual value.

5. *Fine certain cases.*]—In fine certain cases when a fine is payable on alienation by, as well as on the death of, a tenant, the compensation for fines may be calculated by multiplying the amount of the fine by one half of the number of years' purchase given in the table according to the age of the tenant.

6. *Reliefs.*]—The amount of compensation for a relief may be calculated in like manner as a fine certain.

7. *Heriots.*]—The compensation for a heriot payable on alienation by, as well as on the death of, a tenant, may be calculated by multiplying the value of the heriot by one half of the number of years' purchase given in the table according to the age of the tenant.

8. The value of a heriot may generally be ascertained from the average value of the last three heriots taken or paid in respect of the property to be enfranchised. If that information cannot be obtained, or will not apply, the following circumstances should be taken into consideration in fixing the value of a heriot: namely, the nature of the heriot, the character and value of the property, the condition in life of the tenant, and also whether the heriot can be seised as well without as within the manor.

9. *When fine payable only on one of the two events of alienation or death.*]—The table being calculated on the assumption that fines and heriots are payable both on alienation by, and on the death of, a tenant, when a fine, whether arbitrary or certain, or a heriot, is payable only on one of those events, then only one half of the compensation calculated as previously directed should be given.

10. *When fine payable on death of lord.*]—In manors in which fines or heriots are payable on the death of the lord,

as well as on alienation by, or on the death of, a tenant, the compensation on enfranchisement should be increased according to the nature and amount of the customary fine or heriot payable in the manor on the death of the lord.

11. *Quit rents and other annual payments.*—The compensation for quit rents, free rents, and other annual rents, services, or payments, should be calculated at 25 years' purchase.

12. *Timber.*—Compensation for timber should be ascertained as follows:—When by the custom of the manor the lord can enter upon the land, and cut and carry away the timber without the consent of the tenant, its whole value, after making a sufficient allowance for repairs, should be given to the lord. But if the lord cannot enter and cut without the consent of the tenant, one half only of its value, after making a sufficient allowance for repairs, should be given. If, however, there be any special custom in the manor relating to timber, such custom should be regarded.

13. *Forfeitures, &c.*—The compensation for forfeitures and all other incidents of copyhold tenure not hereinbefore provided for, should not exceed 20 per cent. of the annual value of the property. The annual value may be ascertained as in paragraphs 3 and 4.

14. *Escheat.*—The right of escheat being reserved to the lord under the Copyhold Act, 1894, its value is not to be taken into consideration.

15. *Special customs or circumstances.*—If there be any special customs or circumstances connected with any manor which would affect the compensation payable for enfranchisement, they should be taken into consideration, and due allowance should be made in respect of them.

16. The foregoing scale is for guidance only, and is not binding as a matter of law in any particular case; but the party requiring enfranchisement should, in accordance with the act, state to the other party whether or no he is willing to adopt the scale.

T. H. ELLIOTT,
Secretary.

Board of Agriculture,
3, St. James's Square,
London, S.W.

TABLE referred to in the foregoing Scale of Compensation for Enfranchisement.

Age of Tenant.	Number of Years' Purchase.	Age of Tenant.	Number of Years' Purchase.	Age of Tenant.	Number of Years' Purchase.
5	2.29	37	3.26	70	4.50
or under		38	3.29	71	4.54
6	2.32	39	3.33	72	4.57
7	2.34	40	3.36	73	4.60
8	2.37	41	3.40	74	4.63
9	2.40	42	3.43	75	4.67
10	2.43	43	3.46	76	4.70
11	2.46	44	3.50	77	4.73
12	2.49	45	3.53	78	4.76
13	2.52	46	3.57	79	4.78
14	2.55	47	3.60	80	4.81
15	2.58	48	3.64	81	4.83
16	2.61	49	3.67	82	4.85
17	2.63	50	3.71	83	4.86
18	2.66	51	3.75	84	4.90
19	2.69	52	3.78	85	4.92
20	2.73	53	3.82	86	4.94
21	2.76	54	3.86	87	4.95
22	2.79	55	3.90	88	4.97
23	2.82	56	3.93	89	4.99
24	2.85	57	3.97	90	5.00
25	2.88	58	4.01	91	5.02
26	2.91	59	4.06	92	5.03
27	2.94	60	4.10	93	5.05
28	2.97	61	4.14	94	5.06
29	3.00	62	4.18	95	5.08
30	3.04	63	4.23	96	5.10
31	3.07	64	4.27	97	5.12
32	3.10	65	4.31	98	5.13
33	3.13	66	4.35	99	5.15
34	3.16	67	4.39	100	5.16
35	3.20	68	4.43	or up-	
36	3.23	69	4.47	wards	

In constructing this Table a fine arbitrary on admission has been taken as equivalent to two years' annual value; and whilst the average fine interval has been assumed to be 14 years, regard has been had to the age of the tenant on the rolls.

Enfranchisement under the Copyhold Act, 1894.

(27.) *Scale of Allowance to Valuers for their services in the execution of the Copyhold Act, 1894, framed pursuant to section 66 of the said Act.*

Allowance in respect of the annual value of the property enfranchised :—

Annual Value.					Allowance.		
	£				£	s.	d.
Not exceeding	10	-	-	-	2	10	0
„	25	-	-	-	3	0	0
„	50	-	-	-	4	0	0
„	75	-	-	-	5	0	0
„	100	-	-	-	6	0	0
„	125	-	-	-	7	0	0
„	150	-	-	-	8	0	0
„	200	-	-	-	9	0	0
„	250	-	-	-	10	0	0

For every 50*l.* above 250*l.* annual value, 1*l.*

In addition to the above, a further allowance in respect of so much of the compensation as is not payable for fines, or based on annual value, of 5 per cent. upon the amount of such compensation up to 50*l.*, and 2½ per cent. upon the amount of such compensation, if any, in excess of 50*l.*

This scale does not include travelling and other expenses out of pocket, and is applicable only to cases of an ordinary character in which there are no special circumstances.

Charges for tracings or plans, when necessary, will be allowed; but an ordnance survey map should be used when available.

When a case is referred to an umpire, the valuers will be entitled to an additional allowance of from 2*l.* upwards, having regard to the time occupied for attendance before the umpire.

This scale is for guidance only.

By order of the Board,
T. H. ELLIOTT,
Secretary.

Board of Agriculture,
3, St. James's Square,
London, S.W.

Enfranchisement under the Copyhold Act, 1894.

(28.) *Summons, to Witness, to attend Enquiry.*

To

Manor of ———, county of ———.

——— Enfranchisement.

The Board of Agriculture, pursuant to the Copyhold Act, 1894, hereby require you to attend as witness at an inquiry, to be held by an officer of the board, at ———, on the ——— day of ———, 19—, and on any subsequent day appointed by such officer, for the further holding of such inquiry, and the board hereby further require you to bring with you, and produce at the time and place aforesaid, the following documents, that is to say :—

Given under the official seal of the Board of Agriculture this ——— day of ———, 19—.

N.B.—Section 54 of the Copyhold Act, 1894, provides that if any person summoned under that section, to whom a reasonable sum has been paid or tendered for his expenses, without lawful excuse neglects or refuses to attend, or give evidence, or to produce a document in pursuance of the summons, he shall be liable on summary conviction to a fine not exceeding five pounds, and that if any person wilfully destroys or alters any document of which the production is required under that section, he shall be guilty of a misdemeanor.

Enfranchisement under the Copyhold Act, 1894.

(29.) *Declaration as to Title to Rentcharge.*

I, ———, of ———, in the county of ———, do solemnly and sincerely declare that under and by virtue of ———

I am entitled as owner in fee simple [or as tenant for life, or as the case may be] to receive the annual rentcharge of £——, charged upon and issuing out of certain lands of which ———, of ———, is the present owner, and which said lands were formerly copyhold of the manor of ———, in the county of ———, and were enfranchised by an award of enfranchisement dated the ——— day of ———.

†And I do further declare that ———, of ———, and ———, of ———, are the present acting trustees of the said ———, [or, that there are no trustees under the said ———].

And that the said rentcharge is not subject to any incumbrances except*

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

The said _____ declared to the truth of the above declaration at _____, in the said county of, the _____ day of _____, 19—,

Before me,

NOTE.—This declaration must be impressed with a 2s. 6d. stamp.

† Here give the date and short particulars of the deed, will, or other instrument under which the title is derived, and if the person entitled to receive the rentcharge is not owner in fee simple, give the names, addresses, and descriptions in full of the acting trustees of the will or settlement under which he is entitled, or state that there are no such trustees.

‡ To be added when the person entitled to the rentcharge is entitled for a limited estate or interest only.

* State here the nature and extent of the incumbrances (if any) which affect the rentcharge, or if there are no incumbrances strike out the word "except."

PART III.—APPENDIX (*continued*).

(AA) NON-OFFICIAL FORMS.

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(1.) *Application for Extension of Time to appoint Valuer.*

Manor of ———, in the county of ———.

————— Enfranchisement.

Gentlemen,

Agreeably with the provisions of the Copyhold Act, 1894, I beg to make application to you to extend the time within which the valuer on my behalf in the above enfranchisement may be appointed, until, &c.

The following are the grounds on which I make the application [*state the grounds*].

I have the honour to be, &c.

To the Board of Agriculture
(Copyhold Department).

(2.) *Consent to Revocation of Appointment of Valuer.*

Manor of ———.

——— Enfranchisement.

In pursuance of the provisions of the Copyhold Act, 1894, we, the undersigned ———, lord of the said manor, and ———, the above-named tenant of the said manor, mutually consent, that the appointment of Mr. ——— as valuer in the above enfranchisement shall be revoked, and the same is revoked accordingly, and Mr. ——— is hereby appointed valuer in the place of the said ———.

Dated, &c.

(3.) *Complaint to Board of Agriculture, and Application for Removal of Valuer (or Umpire).*

Manor of ———.

——— Enfranchisement.

Gentlemen,

In pursuance of the provisions of the Copyhold Act, 1894, I, the undersigned, ———, lord of the above manor [or ———, the above-named tenant], make this complaint and application, requesting you to remove Mr. ——— from being valuer [or umpire] in the above enfranchisement, on the ground of [misconduct, or refusal to act, or omission to act], on his part.

The following are the circumstances under which I make this application [*state the circumstances.*]

I have the honour to be, &c.

To the Board of Agriculture
(Copyhold Department).

(4.) *Appointment of New Valuer, on Death, &c. of Original Valuer.*

Manor of ———.

——— Enfranchisement.

Agreeably with the provisions of the Copyhold Act, 1894, I, ———, lord of the above-named manor [or ———, the above-named tenant], appoint Mr. ———, of, &c., as valuer to act on my behalf in the above enfranchisement, instead of Mr. ———, deceased [or removed by the Board of Agriculture]. Dated, &c.

(5.) *Application to have Lord's Title investigated.*

Manor of _____.

_____ Enfranchisement.

Gentlemen,

An application for enfranchisement of the lands above referred to having been made to you by the lord of the above manor, I, the above-named tenant, agreeably with the provisions of the Copyhold Act, 1894, make this application to you to satisfy yourselves in such way and by such evidence as you shall see fit of the title of the lord of the above manor.

I have the honour to be, &c.

To the Board of Agriculture
(Copyhold Department).

(6.) *Application to Board of Agriculture to define Boundaries.*

Manor of _____.

_____ Enfranchisement.

Gentlemen,

A doubt having arisen as to the identity of the lands the subject of the above-proposed enfranchisement, and a description of which is set forth at the foot hereof, I beg to request that you will, agreeably with the provisions of Copyhold Act, 1894, define the boundaries thereof for the purposes of the said enfranchisement.

I have the honour to be, &c.

To the Board of Agriculture
(Copyhold Department).

[Description of land.]

(7.) *Notice by Valuers of Intention to enter on Lands, &c.*

Manor of _____.

_____ Enfranchisement.

Sir,

Agreeably with the provisions of the Copyhold Act, 1894, we, _____, of, &c., and _____, of, &c., the valuers in the above enfranchisement, hereby give you notice, that we intend to enter upon the lands and premises proposed to be dealt with under the provisions of the said act,

in the above enfranchisement, to make the necessary measurements, plans, and valuations of the same.

We further request you, by letter addressed to us at, &c., to appoint some convenient time for our entering, and we beg to apprise you that in default of your so doing we shall enter on, &c. Dated, &c.

To Mr. _____,
The occupier of the premises the
subject of this notice.

(8.) *Suspension of Enfranchisement, Lord's application for (a).*

Manor of _____, in the county of _____.
_____ Enfranchisement.

Gentlemen,

Pursuant to the provisions of the Copyhold Act, 1894, I apply to you to suspend the proceedings under the said act in the above matter, on the ground that special hardship and injustice will inevitably result to me from the said enfranchisement being completed; and I rest my application on the statement of facts which accompanies this application, and which may be verified by statutory declaration if desired.

I have the honour, &c.
(Signed) _____.

To the Board of Agriculture
(Copyhold Department).

(9.) *Lord's Application for Permission to Purchase (b).*

Manor of _____, in the city of _____.
_____ Enfranchisement.

Gentlemen,

I beg under the provisions of the Copyhold Act, 1894, to apply for permission to purchase the copyhold lands the subject of the above-proposed enfranchisement, on the ground that the enfranchisement of such lands will prejudicially affect my enjoyment of the demesne lands of the said manor.

(a) The statement of facts referred to in this form must, of course, accompany the application.

(b) The plan or tracing and the statement referred to in this form must, of course, accompany the application.

In support of this application, I send herewith a plan or tracing which shows the relative situations of the said copyhold lands and demesne lands respectively, and a statement explanatory of the prospective injury referred to.

I beg to add that I have given to Mr. ———, the above tenant, an offer in writing, as required by the above act, to purchase his interest in the above copyhold lands.

I have the honour to be, &c.,

(Signed) ———.

To the Board of Agriculture
(Copyhold Department).

(10.) *Lord's Offer to Purchase Copyhold Interest.*

Manor of ———.

——— Enfranchisement.

Sir,

Agreeably with the provisions of the Copyhold Act, 1894, I beg to give you notice that I am about to make application to the Board of Agriculture, to purchase the copyhold interest in the lands, the subject of the enfranchisement now pending, on the ground that, &c. And I do hereby offer to purchase such copyhold interest, and require you to accept this offer within twenty-eight days after receiving same.

I am, &c.,

(Signed) ———.

To Mr. ———.

(11.) *Tenant's Acceptance of Lord's Offer.*

Manor of ———.

——— Enfranchisement.

Gentlemen,

Agreeably with the provisions of the Copyhold Act, 1894, I hereby state my acceptance of the offer made by ———, Esq., lord of the above manor, to purchase the copyhold interest in the lands the subject of this pending enfranchisement, subject to our agreeing on the value of such interest, or to the same being fixed by a valuer, to be appointed under the said act.

I have the honour to be, &c.,

(Signed) ———.

To the Board of Agriculture
(Copyhold Department).

B.C.

E E

(12.) *Agreement as to Value of Copyhold Interest.*

Manor of _____.

_____ Enfranchisement.

It is hereby mutually agreed between _____, lord of the above manor, and _____, the above-named tenant, that the value of the copyhold interest in the lands, the subject of the now pending enfranchisement, and which the said _____ has offered to purchase under the Copyhold Act, 1894, shall be fixed and taken at £_____.

(Signed) _____.

Dated, &c. _____.

(13.) *Surrender of the Copyhold Interest.*

Manor of _____.

Be it remembered, that on the _____ day of _____, in the year of our Lord 19—, _____, of, &c., a copyhold tenant of the said manor, came before me, _____, lord of the said manor:

And did out of court, in pursuance of an agreement in this behalf entered into under the Copyhold Act, 1894, and in consideration of the sum of £_____ to the said _____ paid by me the said _____, on passing this surrender (the receipt of which sum the said _____ doth hereby acknowledge),

Surrender out of his hands into the proper hands of me, the said lord, by the rod,

All [*parcels*],

To have and to hold the said hereditaments unto me the said lord and my heirs, To the uses and upon and for the trusts, intents, and purposes to, upon, and for which the said manor of _____ now stands limited and is held, and to the intent that the same hereditaments may become freehold in the hands of me, the said lord.

(Signed) _____.

Taken the day and year first above written,
by me, _____

(14.) *Lord's Application for Time to Pay Purchase-Money.*

Manor of ———.

In the matter of the proposed purchase by the lord of the above manor, under the Copyhold Act, 1894, of lands proposed by Mr. ———, a tenant thereof, to be enfranchised.

Gentlemen,

I beg to apply to you under the above act, to extend the time for payment of the consideration money on the above purchase, ordered by your certificate, dated, &c., to be paid on, &c., until, &c.; and I make this application on the following grounds [*here state the grounds of application*].

I have the honour to be, &c.,

(Signed) ———.

To the Board of Agriculture
(Copyhold Department).

(15.) *Copyholder's Application to Cancel Certificate.*

Manor of ———.

In the matter of the proposed purchase, &c.

Gentlemen,

I beg to apprise you that the consideration-money on the above purchase which was ordered by your certificate, dated, &c., to be paid on, &c., still remains unpaid, though applied for, and agreeably with the Copyhold Act, 1894, I apply to have the said certificate cancelled.

I have the honour to be, &c.,

(Signed) ———.

To the Board of Agriculture
(Copyhold Department).

(16.) *Tenant's Application to Inspect Court Rolls after Enfranchisement.*

Sir,

I beg to apprise you that I am interested in the lands formerly copyhold [*or, as the case may be, customary freehold*] of the manor of, &c., enfranchised to Mr. ——— on or about, &c.; and agreeably with the provisions of the Copyhold Act, 1894, I hereby require an inspection of the

court rolls of the said manor, and request that you will, by letter addressed to me at, &c., appoint a convenient place and time for such inspection; and in default of your so doing, I propose to attend at your office for that purpose on ———, at the hour of ———; and I will, on such inspection, pay you a reasonable fee for the same.

I am, &c.,

(Signed) ———.

To Mr. ———.

(17.) *Lord's Notice of Intention to Seize, &c. (a).*

Sir,

I beg to apprise you that the sum of £—— has become payable to me for enfranchisement consideration [or, as the case may be, for interest on the enfranchisement consideration] in respect of lands in your occupation, formerly copyhold of the manor of ———, and which were enfranchised under the Copyhold Act, 1894, and remains unpaid; and that under the provisions of the said act, I have become entitled to the rents and profits of such lands; unless, therefore, you attorn and become tenant to me of the said lands, I shall proceed to obtain possession thereof under the provisions in that behalf contained in the said act.

(Signed) ———.

To Mr. ———.

(18.) *Lord's Notice of intended Distress (a).*

I, ———, of, &c., lord of the manor of, &c., hereby give you notice that the sum of £—— for interest on the consideration money payable for the enfranchisement of the lands called, &c., situate, &c., and now in your occupation, and which lands were formerly copyhold of the said manor, is due to me, and remains unpaid, and that unless the same be paid by, &c., I shall proceed to levy the same by distress, agreeably with the provisions in that behalf of the Copyhold Act, 1894.

(Signed) ———.

Dated, &c.

To Mr. ———.

(a) These two forms may be readily adapted to the case of owners of rentcharges and rentcharge redemption moneys.

PART III.—APPENDIX (*continued*).

(B.)—PRECEDENTS.

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- (1.) *Agreement for Commutation* (now obsolete), either the lord or the tenant being entitled for only a limited estate.

Manor of ———, in the county of ———.

MEMORANDUM OF AGREEMENT made this ——— day of ———, 18—, between A. B., of, &c., lord of the said manor of the one part, and C. D., of, &c., a copyhold tenant of the said manor of the other part (*a*), and

(*a*) Where it was intended by the commutation agreement to commute also the steward's fees, then the steward must have

intended to be entered on the court rolls of the said manor pursuant to the provisions of the Copyhold Acts. Whereas at a court held for the said manor on the ——— day of ———, 18—, the said C. D. was admitted tenant of all [*parcels*] to hold to the said C. D., and his heirs and assigns [*or as the case may be*], at the will of the lord and according to the custom of the said manor. And whereas the said A. B., as such lord as aforesaid, and the said C. D., as such tenant as aforesaid, are desirous of effecting such commutation of the said copyhold hereditaments as is hereinafter expressed to be hereby made or agreed to be made.

Now it is hereby agreed between the said A. B. and the said C. D., pursuant to the provisions of the Copyhold Acts, and with the consent of the Land Commissioners (testified as hereunder appearing), as follows, that is to say,

1. That for the consideration hereinafter expressed, the said A. B. shall commute all the lord's rents, fines, and heriots, rights in timber, mines, and minerals, and other rights [*or as the case may be*].

2. That the consideration payable by the said C. D. to the said A. B. for such commutation as aforesaid shall be the commutation fine [*or, as the case may be, the commutation rentcharge, with fine, or the land, &c., and so forth, according to what the consideration for the commutation really is*] hereinafter mentioned.

3. That the said commutation fine (*scil.* where the consideration for the commutation is a fine) shall be of the

been made a party to the agreement (which would then be tripartite, *viz.*, the lord of the first part, the steward of the second part, and the tenant of the third part), and it would contain the following further agreement, *viz.* :—

“And further, it is hereby agreed between the said A. B., as lord of the said manor, and the said H. T., as the steward thereof, and the said C. D., as such tenant as aforesaid, that, pursuant to the provisions in this behalf of the Copyhold Acts, the scale of fees to be payable to the steward of the said manor, from and after the confirmation of this agreement, shall be according to the table or scale of fees hereunto annexed and signed by the said parties hereto, without prejudice, nevertheless, to the payment to the steward of his reasonable fees, in cases not provided for by the said scale, and all disbursements for stamps or parchment to be charged by the steward in addition to the fees specified in the said scale.” And, of course, the table referred to would be annexed.

amount and amounts following, that is to say: £——, on the admission of any single tenant, whether the alienation upon which such admission shall be made is an alienation on death, or *inter vivos*; and in the case of two or more tenants, whether joint tenants, coparceners, or tenants in common, being so admitted, the fine for the first of such tenants shall be £——, and half of that sum for the second of such tenants, and half of that half for the third of such tenants, and so in proportion for any fourth or other further one of such tenants.

Or, 3a. [*Where the consideration for the commutation is a rentcharge with fine.*] That the said commutation rentcharge shall be an annual fee simple rentcharge of £——, clear of all deductions whatsoever (except for property or income tax), and payable half-yearly on the 1st day of January and 1st day of July in every year, and a due proportion thereof shall be paid on the 1st day of July (or January) next, in respect of the period intervening between the date of these presents and the said 1st day of July (or January) next; and further, the fixed sum of two shillings, as a fine, shall be payable on every admission (whether of one tenant or of several tenants), to be hereafter made on any alienation, whether such alienation shall be on death or *inter vivos*, and whether to the whole tenement or to any part thereof (a).

(a) In the Precedent of a Commutation Agreement, above given, if the mines were reserved to the lord they would be excluded, of course, from the commutation, by not being specified in Clause 1 of the above precedent; and in such a case, it would have been sufficient (Act 1841, s. 84) to say, that rights of working the reserved minerals were granted; but it might, at the same time, have been desirable to add the following express clause:—

(3b) That the lord, for the better working and winning of the mines and minerals within or under the said lands the subject of this agreement, and which are not included in the commutations hereby effected, shall and may exercise in, over, under, or through the said lands (subject to such payment, by way of compensation, as is hereinafter provided) the following mining rights; that is to say [*here specify them, and then continue as follows*], the lord or other person exercising the said rights, liberties, and privileges, paying to the tenant or other the owner of the said lands the subject of this agreement for any damage to the last-mentioned lands, or to the buildings thereon, that shall be occasioned by the exercise of the said rights, &c., such compensation as (failing agreement) shall be settled by arbitration in the usual way.

4. That [where so agreed] the said commutation fine [where that is the consideration] shall be increased or diminished in the events and in the proportions following; that is to say:—[Here state them, usually by reference to the value of the lands as assessed to the relief of the poor, or as appearing from the poor rate assessment.]

As witness the hands of the parties, the day and year first above written (a).

(2.) *Agreement for Enfranchisement* (under the Copyhold Act), either the lord or the tenant being entitled for only a limited estate (b).

Manor of ———, in the county of ———.

MEMORANDUM OF AGREEMENT made the ——— day of ———, 18—, between A. B., of, &c., lord of the said manor, of the one part, and C. D., of, &c., a copyhold tenant of the said manor, of the other part, whereby (subject to the sanction of the Land Commissioners for England being obtained hereto) it is agreed as follows:—

1. That on payment by the said C. D. to the said A. B.

(a) If the consideration for the commutation was the conveyance of land, then, in lieu of Clauses 2, 3, and 4 in the above precedent, the following clause would have been inserted, viz.:—

“(2) That the consideration for such commutation as aforesaid shall be the land [describing it], and which land, by an assurance of even date herewith, and made between, &c., and executed immediately before the execution of this agreement, has been conveyed to, or otherwise effectually vested in, the said [lord] and his heirs, to, for, and upon the uses, trusts, and purposes, to, for, and upon which the said manor now stands limited, and is held [and (if copyhold) to the intent that the same land may henceforth become of freehold tenure in the hands of the lord].”

If the consideration for the commutation was the conveyance of mines and minerals, then, in lieu of Clauses 2, 3, and 4 in the above precedent, a clause would have been inserted similar, *mutatis mutandis*, to the clause above given when the consideration was the conveyance of land, the clause extending to the grant of surface and other mining rights (subject or not subject to any payments in the nature of way-leave rents, or to any payments by way of compensation for damage occasioned to the surface by subsidence, or otherwise). (See Bainbridge on Mines, 5th ed., by Brown (1900), and the Precedents there.)

(b) As regards enfranchisements by agreement (i.e., voluntary enfranchisements) under the Copyhold Act, 1894, see the Official Forms, Nos. 22 and 23, pp. 392—394, *supra*.

[or as the case may be], of the sum of £—— [or as the case may be, on such conveyance, &c.], the said A. B. will execute to the said C. D. a proper deed of enfranchisement of all [*parcels*] copyhold of the said manor, and to which the said C. D. was admitted tenant on the court rolls of the said manor on the —— day of ——, 19—.

2. That the title to the said manor shall commence with, &c.

3. [Conditions, general and special, as to title and otherwise; and (where the consideration is not fixed by the agreement) as to ascertaining same.]

4. [Conditions as to completion of the enfranchisement; and a clause to the following effect may be usefully inserted here, viz.:—]

“In case of dispute as to the form of the proposed enfranchisement deed, or as to any particular clause or provision therein contained, the draft thereof shall be submitted to Mr. ——, of, &c., with a copy of this agreement; and the draft shall be settled by him accordingly on behalf of both parties, and either without or (if he shall so desire) after hearing the parties thereon personally or by their solicitors or counsel; and the costs of and incident to such reference (including the fee of the said ——) shall be paid and borne as he shall direct.”

As witness, &c.

(3.) *Enfranchisement Deed apart from the Copyhold Act, 1894* (the Lord of the Manor being seised in fee).

THIS INDENTURE made, &c., between A. B., of, &c., lord of the manor of ——, in the county of ——, and seised in fee simple in possession of the same manor, and G. B., his wife, of the one part, and C. D., of, &c., a copyholder of the same manor, of the other part. Witnesseth, that in consideration of the sum of £——, upon the execution of these presents paid by the said C. D. to the said A. B. for the enfranchisement of the hereditaments hereinafter expressed to be hereby enfranchised, and for such grant of commonage as is hereinafter contained (the receipt whereof the said A. B. doth hereby acknowledge) he, the said A. B., doth hereby enfranchise, grant, and release [and the said G. B., with the concurrence of the said A. B., and for the purpose of extinguishing her right of dower, doth hereby release and dispose of] unto the said C. D. and his heirs all those [*parcels*], to which said

tenements and hereditaments the said C. D. was admitted tenant on the ——— day of ———, and which said tenements and hereditaments are now better known and described as [*parcels*]. To have and to hold all the said premises hereinbefore expressed to be hereby enfranchised unto and to the use of the said C. D., his heirs and assigns for ever, discharged from the copyhold tenure thereof, and from all rents, fines, heriots, suits, and services in respect thereof. To the use of the said C. D., his heirs and assigns for ever. And This Indenture also Witnesseth that for the consideration aforesaid he, the said A. B., doth hereby grant [and the said G. B., with his concurrence, and for the purpose of extinguishing her right of dower, doth hereby release and dispose of] unto the said C. D. and his heirs all such commonage and right to common in, upon and over all or any of the wastes and commonable lands of the said manor of ——— as the said C. D., or any person or persons through whom he claims, held, enjoyed, or was entitled to in respect of, and as appendant or appurtenant to, all or any of the said premises hereinbefore expressed to be hereby enfranchised, and the freehold and inheritance of all such commonable rights as aforesaid, in the same or the like manner as the said C. D., or his customary heirs, could have used or exercised the same if the said premises had not been enfranchised. To have and to hold all the said premises lastly hereinbefore expressed to be hereby granted unto and to the use of the said C. D., his heirs and assigns for ever.

In witness, &c.

(4.) *Lease for Long Term, by Licence (Preliminary to the foregoing Deed of Enfranchisement apart from the Copyhold Act).*

THIS INDENTURE, made the ——— day of ———, 19—, between C. D., of, &c., of the one part, and X. Y., of, &c., of the other part. Witnesseth, that he, the said C. D., by virtue and in pursuance of a licence to him granted by the lord of the manor, whereof the copyhold lands and hereditaments hereinafter demised are holden, bearing date on or about the ——— day of ——— now last past, whereby the said C. D. is authorized to demise and let the said copyhold lands and hereditaments unto any person or persons at his will and pleasure, for any term or number of years not exceeding 1,000 years, commencing from the day of the date of the said licence, Hath demised, leased,

and to farm-letten, and by these presents Doth demise, lease, and to farm-let, unto the said X. Y., his executors, administrators, and assigns, All [*parcels*]. To have and to hold the said messuage or tenement lands, hereditaments, and all and singular other the premises hereby demised or intended so to be, and every part and parcel of the same with their appurtenances, unto the said X. Y., his executors, administrators, and assigns, from the date of the said licence, for and during and unto the full end and term of 1,000 years from thence next ensuing, fully to be complete and ended, In trust, nevertheless, for the said C. D., his heirs and assigns, to attend, wait upon, and go along with the reversion and inheritance of the copyhold tenure of and in the said hereditaments, in the meantime and until the same copyhold tenure shall be extinguished, and, after such extinguishment, In trust for the person or persons to whom the freehold tenure of and in the same hereditaments shall be conveyed, In trust for and for the only benefit of the said C. D., his heirs and assigns, and otherwise according to the estates and interests which shall from time to time be existing in the said hereditaments when of freehold tenure, To the end and intent that the reversion and inheritance of the said copyhold tenure of and in the said hereditaments in the meantime and until that tenure shall be extinguished, and afterwards to the intent that the freehold tenure of and in the same hereditaments shall, by means of the said term of 1,000 years, be protected and defended from and against all incumbrances against which the said term of 1,000 years can afford a protection. In witness, &c.

(5.) *Enfranchisement Deed apart from the Copyhold Act, 1894—Reserving the Ancient Rent, Specified Services, and Mines, &c. (a).*

THIS INDENTURE made the ——— day of ———, 18—, between A. B., of, &c., lord of the manor of ———, in the county of ———, of the one part, and C. D., of, &c., one of the copyhold tenants of the said manor, of the other part: Whereas the said C. D. is seised or possessed at

(a) The reservation of the ancient rent, which purports to be made by this precedent, may not be (and apparently is not) effective; but the rent would be a new rent lying in covenant, and in the nature of a rent-seck. (See *Doe d. Reay v. Huntington*, 4 East, 271, 290.)

the will of the lord of the said manor and according to the custom thereof, of the copyhold messuage or tenement called ———, hereinafter more particularly described, by copy of court roll of the said manor, subject to the payment of the ancient yearly rent of ———, and of a reasonable arbitrary fine on the death or alienation of the tenant, and to other dues, duties, customs, and services. And whereas the said A. B. is seised in his demesne as of fee of and in the said manor. And whereas the said A. B. and C. D. have agreed to make and accept respectively such enfranchisement of the said copyhold hereditaments as is hereinafter expressed to be hereby made, subject as hereinafter expressed, and excepting as hereinafter expressed. Now This Indenture Witnesseth, that in execution of the said agreement, and in consideration of the sum of £———, to the said A. B. now paid by the said C. D. (the receipt whereof the said A. B. hereby admits), he, the said A. B., as beneficial owner, doth hereby grant, bargain, sell, aliene, release, quit claim, and confirm unto the said C. D. and his heirs all [*parcels*], and also all trees, woods, and underwoods now growing or which shall hereafter grow upon the said copyhold premises hereby released or intended so to be, or any part thereof, and the ground and soil of the said woods and underwoods; and also free liberty for the said C. D. his heirs and assigns, to dig for and get freestone, limestone, clay, marl, sand, and slate, in and upon the said premises, or any part thereof, for the purpose of improving the said enfranchised premises and repairing the buildings, walls, and premises belonging thereto, or erecting new buildings or making new walls thereupon, and to make bricks of the said clay, for the purposes aforesaid; and also all such common of pasture and turbary in and upon all the commons, wastes, and commonable places of and within the said manor of ——— as he, the said C. D., at the time of the execution of these presents, is entitled unto for or in respect of the said premises. [Saving always and excepting out of this present grant, and for ever reserving unto the said A. B., his heirs and assigns, the said yearly rent of ——— to be for ever hereafter paid to the said A. B., his heirs and assigns, as a fee-farm rent to be issuing and payable out of the said premises, and every part thereof, at such times and in such manner as the same is now due and accustomed to be paid; and also saving and excepting out of this present grant, and for ever reserving unto the said A. B., his heirs and assigns, all coal mines, veins and seams of coal, and other mines,

metals, and minerals whatsoever, and all quarries of stones, as well opened as unopened, or which shall or may at any time hereafter be opened, or found in, under, or upon the said premises or any part thereof; with full and free liberty and power for the said A.B., his heirs and assigns, and for his and their workmen, servants, and agents, and all other persons to be employed by him or them for that purpose from time to time, and at all times hereafter, at his and their will and pleasure, to search and dig for and work the same, and the coals, ore, metals, minerals, and stone found and got in, under, and upon the said premises, or any part thereof, and also the earth and rubbish there dug up or raised, to heap, bank, or keep in and upon the said premises or any part thereof; and from thence at his and their will and pleasure, to drive and carry away the said coal, ore, metals, minerals, and stone and other produce of such mines and quarries in, through, and over any convenient and proper part of the said premises; and for the better working and using the same, to erect fire engines, hearths, smelting-houses, furnaces, and other buildings in or upon the said premises, or any part thereof, necessary or proper for the working of the said mines, ore, metals, minerals, and quarries; or to employ any other means now in use, or which shall or may at any time hereafter be in use for the working, or using, or carrying away of coals, ore, metals, minerals, or stone, and to do every other matter and thing for the purposes aforesaid; and also to make, or lay down and continue, any waggon way or other ways, and to make any drains, cuts, or sluices, and to do every other act that may be proper or necessary for the making or continuing the said ways in, through, and over any proper and convenient part of the said premises, for more commodiously driving and carrying away the said coals and metals, minerals and stone, there to be dug, raised, or gotten; he, the said A. B., his heirs or assigns, paying or making a reasonable compensation for the damage which may be sustained by the prospective owners or occupiers of the said premises for the time being, on account thereof; and saving also, and excepting out of this present grant, and for ever reserving to the said A. B., his heirs and assigns, all and all manner of waifs, estrays, deodands, goods and chattels of felons and fugitives, felons of themselves, persons outlawed and put in exigent, treasure trove, and wrecks of the sea, of what nature or kind soever which shall hereafter happen or become forfeited, found, or

taken in or upon the said premises, or any part thereof; and all such ancient piscaries or fishings, and other royalties, liberties, privileges, and franchises as are now used and enjoyed by the said A. B., or have been anciently or heretofore used, exercised, or enjoyed by the former lords of the said manor, or any of them, and also free liberty of hunting, hawking, fishing, and fowling for the said A. B., his heirs and assigns, and the lord or lords, lady or ladies, of the said manor for the time being, his, her, or their game-keepers and servants, in, over, and upon the said premises, and all other manorial rights and rights of seigniories whatsoever, except such as are hereby granted and released, or intended so to be, in as full, large, and ample a manner as if the present enfranchisement had not been made.] To have and to hold the said messuage or tenement, closes or parcels of land, hereditaments, and all and singular other the premises hereby enfranchised, granted and released, or mentioned or intended so to be, with the appurtenances (save and except as hereinbefore is saved, excepted, and reserved) unto the said C. D. and his heirs, to the only proper use and behoof of the said C. D., his heirs and assigns, for ever, to the intent and purpose, and so as that the said premises may for ever hereafter remain and continue enfranchised, and may be absolutely freed and discharged of and from all fines, customary tenures, and services whatsoever (other than and except such as are hereinbefore excepted and reserved); Yielding, rendering, and paying to the said A. B., his heirs and assigns, the said accustomed yearly rent of £——, payable by equal portions on the —— day of ——, and —— day of ——, in every year, as heretofore accustomed, clear of all taxes whatsoever, and of all other deductions and outgoings (landlord's property or income tax only excepted), the first payment to be made on the —— day of —— next; and yielding, also, and performing suit of court at the courts leet and courts baron of the said A. B., his heirs and assigns, to be holden from time to time for the said manor, and suffering and permitting the said A. B., his heirs and assigns, to exercise and enjoy the several manorial and other rights, royalties, privileges, and franchises hereinbefore mentioned and reserved according to the reservation aforesaid, and the true intent and meaning of these presents. And the said C. D. doth hereby covenant with the said A. B., that in case the said C. D., his heirs and assigns, or any of them, or any future tenant of the same premises, or any part thereof,

shall, at any time or times hereafter, without any reasonable cause or excuse, refuse, neglect, or decline to appear, and to do and perform suit services, and all other matters and things at the several courts leet and courts baron, to be held for the said manor in such and the like manner as other the tenants of the said manor have usually done or shall do, that then and in any of the said cases, and as often as it shall happen, the said C. D., his heirs and assigns, shall and will forfeit and pay to the said A. B., and all and every future lord and lords, lady and ladies, of the said manor, for every such neglect or default, any sum of money not exceeding ——— shillings nor less than ——— shillings at the discretion of the said A. B., or the steward of the courts of the said manor, or the lord or lords, lady or ladies, of the said manor for the time being. And also that it shall and may be lawful to and for the said A. B., and all and every future lord and lords, lady and ladies of the said manor into and upon the said premises hereby enfranchised, granted, and released, and into and upon every or any part thereof, to enter and distrain for the sum or sums so to be incurred and imposed for such neglect as lastly aforesaid, and the distress and distresses then and there found to take, lead, carry away and impound, detain and keep, until such fine shall be fully paid, and until all costs, charges, and expenses of such distress and distresses, and of the taking and keeping the same, shall be fully paid and satisfied; and in default of such payment within five days exclusive, after any such distress or distresses shall be so taken, to appraise and sell and dispose thereof according to law, to the intent that thereby the said A. B. and all and every future lord and lords, lady and ladies, of the said manor for the time being may be fully paid and satisfied the said fine and fines so to be incurred and imposed for such neglect as lastly hereinbefore mentioned, and every of them, and all costs, charges, and expenses attending the recovery thereof. And also that he the said C. D., his heirs, executors, administrators, and assigns, shall and will, from time to time and at all times hereafter, well and truly pay or cause to be paid unto the said A. B. and all and every future lord and lords, lady and ladies, of the said manor for the time being, the said yearly rent of ——— at the day or times hereinbefore appointed for payment thereof, and also appear at the courts leet and courts baron of the said A. B., his heirs and assigns, to be holden from time to time in and for the said manor as resciantes and freeholders, and cause the death or

alienation of every tenant of the said premises, or any part thereof, to be presented at the next court-leet or court baron of the said A. B., his heirs and assigns, to be holden in and for the said manor, or otherwise notify the same effectively to the steward of the said manor. And also shall and will from time to time and at all times hereafter permit and suffer the said A. B., and every future lord and lords, lady and ladies, of the said manor, peaceably and quietly to hold, exercise, and enjoy all and every the manorial rights, rights of seigniories, and all other rights, royalties, liberties, franchises, and privileges whatsoever of and belonging to the said lord or lords, lady or ladies, of the said manor for the time being in as full, large, ample, and beneficial a manner to all intents and purposes as he, she or they could or might have held and enjoyed the same if these presents had not been made and executed according to the reservations aforesaid and the true intent and meaning of these presents, and also that he the said C. D., his heirs, executors, administrators, or assigns, or any of them, shall not nor will, at any time hereafter, dig for or get any freestone, limestone, clay, marl, slate, or sand, in, upon, or under the said premises, or any part thereof, except for the purpose of improving the said enfranchised premises or repairing the buildings, walls, or fences belonging thereto, or erecting new buildings thereon, or to make bricks of the same clay for the purposes aforesaid.

In witness, &c,

(6.) *Surrender of a Capitular Lease for Lives of Copyholds on a Purchase by the Church Estates Commissioners.*

Manor of ———, in the county of ———, the ———
day of ———, 18—.

WHEREAS under the will of the late L. M., late of, &c., deceased, dated, &c., and proved, &c., and by virtue of several grants made according to the custom of the said manor, A. B., of, &c., and C. D., of, &c., Esquires, the trustees of the said will, are the proprietors, according to the custom of the said manor, of the hereditaments described in the schedule hereunder written for the lives of the several persons whose names and ages are respectively set opposite to such hereditaments in the said schedule, and, as such trustees, they are bound to sell and dispose

of the said hereditaments, either by public auction or by private contract, and either together or in parcels. And whereas the dean and chapter of, &c. [*giving their proper descriptions*], with the approval of the Church Estates Commissioners, have agreed with the said A. B. and C. D., as such trustees as aforesaid, for the purchase, at the price of £——, of the said scheduled hereditaments for the lives of the said several *cestuis que vie*, and for all other the estates and interests (if any) of them the said A. B. and C. D., as such trustees as aforesaid, in the same premises. And whereas the said Church Estates Commissioners have directed that the assurance to the said dean and chapter upon the said purchase shall be made by the surrender hereinafter mentioned to be made, and in the form and manner hereinafter appearing. Now be it remembered that, in pursuance of the said agreement and direction, and in consideration of the sum of £——, to the said A. B. and C. D., as such trustees as aforesaid, at the request of the said dean and chapter, this —— day of ——, paid by the said Church Estates Commissioners out of moneys produced by the sale of lands formerly belonging to the said dean and chapter, which have been paid to the credit of the said Church Estates Commissioners, they, the said A. B. and C. D., as such trustees and proprietors as aforesaid, came before ——, steward of the said manor, and surrendered into the hands of the lords of the said manor by the hands and acceptance of the said steward, according to the custom of the said manor, all the estates and interests of them, the said A. B. and C. D., for the several lives aforesaid, and otherwise howsoever, of and in the said several lands, tenements and hereditaments described in the said schedule hereunder written, and delineated in the plan drawn on these presents and therein coloured ——, the numbers in the first column of the said schedule referring to the same numbers in the said plan, and also to the same numbers in the apportionment of the tithe commutation rentcharge of the parish of ——, and which said several lands, tenements and hereditaments were formerly described on the court rolls of the said manor as follows, that is to say [*parcels from court rolls*]; to the intent that all the estates and interests of the said A. B. and C. D., as such trustees as aforesaid, in the said premises hereinbefore mentioned to be surrendered, and the copyhold tenure and quality of the same premises may be absolutely merged and extinguished in the freehold and inheritance thereof and of the said manor, and that the

same premises may henceforth remain part of the demesne lands of the said dean and chapter, as lords of the said manor, subject only to the provisions and restrictions expressed and contained in the Ecclesiastical Estates Act, 1851.

THE SCHEDULE.

Descriptions.	Lives.	Ages.

(7.) *Release and Confirmation by way of Extinguishment [on the last-mentioned Purchase, to accompany the Surrender].*

THIS INDENTURE, made, &c., between A. B., of, &c., and C. D., of, &c., Esquires, of the first part; E. F., G. H., and I. K. (the Church Estates Commissioners duly constituted and appointed under and by virtue of the Ecclesiastical Commissioners Act, 1850, and made parties to and joining in these presents under and by virtue of the Ecclesiastical Estates Act, 1851, and the several subsequent Acts continuing and amending the same), of the second part; and the dean and chapter of, &c. [*giving their proper description*], of the third part; Whereas the said dean and chapter are lords of the manor of ———, in the county of ———; And whereas, under the will of L. M., late of, &c., deceased, dated, &c., and proved, &c., and by virtue of several grants made according to the custom of the said manor, the said A. B. and C. D., as the trustees of the said will, are the proprietors, according to the custom of the said manor, of the hereditaments described in the schedule hereunder written, for the lives of the several persons whose names and ages are respectively set opposite to such hereditaments in the said schedule, and as such trustees they are bound to sell and dispose of the said hereditaments, either by public auction or private contract, and either together or in parcels: And whereas the said dean and chapter, with the

approval of the Church Estates Commissioners (testified by their being parties to and executing these presents), have agreed with the said A. B. and C. D., as such trustees as aforesaid, for the purchase, at the price of £——, of the said hereditaments: And whereas the said Church Estates Commissioners have directed that the assurance to the said dean and chapter upon the said purchase shall be made by the surrender hereinafter recited, and by these presents in the form and manner hereinafter appearing: And whereas, in pursuance of the said agreement and direction, and in consideration of the sum of ——, to the said A. B. and C. D., as such trustees as aforesaid, this day, paid by the Church Estates Commissioners as hereinafter more particularly mentioned, the said A. B. and C. D. have this day, according to the custom of the said manor, surrendered all their estates and interests for the lives of the several persons aforesaid, and otherwise howsoever, in the said several tenements and hereditaments particularised in the said schedule, to the intent hereinafter expressed: Now this indenture witnesseth, that in further pursuance of the said agreement and direction, and in consideration of the sum of £—— to the said A. B. and C. D., as such trustees as aforesaid, and at the request of the said dean and chapter, this —— day of ——, paid by the said Church Estates Commissioners out of moneys produced by the sale of lands formerly belonging to the said dean and chapter, which have been paid to the credit of the said Church Estates Commissioners, They the said A. B. and C. D., as such trustees and proprietors as aforesaid, and by the direction of the said Church Estates Commissioners do, and each of them doth, by these presents release and confirm, and they the said Church Estates Commissioners, in pursuance of the provisions of the said Ecclesiastical Estates Act, 1851, do by these presents confirm unto the said dean and chapter, their successors and assigns, All the said lands, tenements, and hereditaments described in the said schedule hereunder written, and delineated in the plan drawn in the margin of these presents, and therein coloured ——, the numbers in the first column of the said schedule referring to the same numbers in the said plan, and also to the same numbers in the apportionment of the tithe commutation rentcharge of the parish of ——, and which said several lands, tenements, and hereditaments, were formerly described on the court rolls of the said manor as follows, that is to say [*parcels from court rolls*]: To the intent that all the

estates and interests of the said A. B. and C. D. in the said premises hereinbefore expressed to be hereby released, and the copyhold tenure and quality of the same premises, may be absolutely merged and extinguished in the freehold and inheritance thereof, and of the said manor, and that the same premises may henceforth remain part of the demesne lands of the said dean and chapter, as lords of the said manor, subject only to the provisions and restrictions expressed and contained in the Ecclesiastical Estates Act, 1851.

THE SCHEDULE (*as in the last Precedent*).

(8.) *Copyholder's Conveyance to Railway (or other Public) Company.*

KNOW ALL MEN BY THESE PRESENTS, that X. Y., of, &c., in consideration of the sum of £—— by the —— Railway Company now paid to the said X. Y. for the absolute purchase of the pieces or parcels of land and hereditaments hereinafter conveyed, and such estate and interest in the timber thereon, and in the mines and minerals thereunder, as the said X. Y. may lawfully sell and convey (the receipt whereof the said X. Y. doth hereby admit), He, the said X. Y., in execution of the powers for this purpose given by the —— Railway Act (hereinafter called the special act), and the public acts incorporated therewith, and as beneficial owner, doth hereby convey unto the said company, their successors and assigns, All [*parcels*], and all such estate and interest in the timber and other trees on the said pieces or parcels of land, and in the mines and minerals thereunder, as the said X. Y. may lawfully convey under the said acts or otherwise; To have and to hold the said pieces or parcels of land, hereditaments, and premises unto the said company, their successors and assigns, for ever, according to the true intent and meaning of the said special act, and the other acts incorporated therewith (a).

In witness, &c.

(a) This conveyance is a freehold conveyance, and only by virtue of the 95th section of the Lands Clauses Consolidation Act, 1845, is it applicable to copyholds; when enrolled (as directed by that act) it acquires all the effect of a surrender. (*Dimes v. Grand Junction Canal Co.*, 9 Q. B. 469; 3 H. L. Cas. 794.)

(9.) *Enfranchisement Deed—apart from the Copyhold Act, 1894 (the lord of the manor being seised in fee)—to a railway (or other public) company.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c., sends greetings: Whereas the said A. B. is seised of or otherwise well entitled in fee simple in possession, free from all incumbrances, to the manor of ———, in the county of ———, of which manor the copyhold pieces or parcels of land and other hereditaments hereinafter described and intended to be hereby conveyed and enfranchised are parcel: And whereas the said pieces or parcels of land and other hereditaments are required and, by the ——— Railway Act (hereinafter called the special act) and the public acts incorporated therewith, are authorised to be taken for the purposes of the special act by the ——— Railway Company: And whereas by a deed bearing date on or about the ——— day of ———, and entered on the court rolls of the said manor, and under the hand and seal of ———, of ———, the copyhold or customary tenant thereof, the said pieces or parcels of land and hereditaments have been duly conveyed, pursuant to the provisions of the Lands Clauses Consolidation Act, 1845, unto the said company, their successors and assigns for ever, but subject, nevertheless, until the same should have been enfranchised by virtue of the provisions contained in the act last referred to, to the same fines, rents, heriots, and services as had theretofore been payable and of right accustomed in respect thereof: And whereas in obedience to the directions of the Lands Clauses Consolidation Act, 1845, in this behalf, the said company, on or about the ——— day of ——— last past, applied to the said A. B. to enfranchise the said pieces or parcels of land and other hereditaments, and to convey the same, and the timber and underwood thereupon, and the mines and minerals thereunder, unto the said company, whereupon the said A. B. agreed to accept and take the sum of £—— as and by the way of the consideration money for such enfranchisement and conveyance, and for the loss to be sustained by him in respect of the fines, heriots, and other services payable on death, descent, or alienation, or any other matters, lost by the vesting of the said pieces or parcels of land and hereditaments in the said company, or by the enfranchisement thereof: Now These Presents Witness, that in pursuance of the said agreement, and in obedience to the

Lands Clauses Consolidation Act, 1845, and in consideration of the sum of £—— by the said —— Railway Company now paid to the said A. B. (the receipt whereof he doth hereby admit), he the said A. B. as beneficial owner doth hereby grant, enfranchise, release and quit claim, and, in execution of the powers for this purpose given by the Lands Clauses Consolidation Act, 1845, doth hereby release and convey unto the said —— Railway Company and their successors all [*parcels*]: To hold the premises unto and to the use of the said —— Railway Company, their successors and assigns for ever, according to the true intent and meaning of the said —— Railway Act, 18—: To the end and intent that the copyhold and customary tenure of the said hereditaments and premises may become and be henceforth extinguished, and that the same may be for ever hereafter held in free and common socage, absolutely enfranchised from all fines, heriots, and other services, and customs whatsoever, which, according to the custom of the said manor of ——, the same hereditaments and premises now are or heretofore have been subject or liable to or charged with, or which otherwise ought to be paid, done, or performed in respect of the same or any part thereof as hereditaments or tenements holden by copy of court roll of the said manor of ——. And the said A. B. doth hereby acknowledge the right of the said railway company to the production of the deeds and documents of title specified in the schedule hereto and of the court rolls of the said manor, and doth hereby also undertake for the safe custody thereof.

In witness, &c.

THE SCHEDULE.

-
- (10.) *Deed Poll by Railway (or other Public) Company by way of Enfranchisement (the Lord of the Manor not being able to adduce a good title).*

TO ALL TO WHOM THESE PRESENTS SHALL COME, The —— Railway Company, incorporated by the —— Railway Act, 18—, in which act (hereinafter called the special act) is incorporated the Lands Clauses Consolidation Act, 1845, send greeting: Whereas the pieces or parcels of land and other hereditaments described in the schedule hereunder written, and also more particularly

delineated in the plan hereupon indorsed and therein coloured red, are held by copy of court roll of the manor of ———, in the county of ———, and the same are required, and by the special act and the public acts incorporated therewith, are authorised to be taken for the purposes of the special act by the said railway company: And whereas, by a deed bearing date on or about the ——— day of ———, and entered on the court rolls of the said manor, and under the hand and seal of ———, of ———, the copyhold or customary tenant thereof, the said pieces or parcels of land and other hereditaments have been duly conveyed, pursuant to the provisions of the Lands Clauses Consolidation Act, 1845, unto the said Company, their successors and assigns for ever, but subject, nevertheless, until the same should have been enfranchised by virtue of the provisions contained in the act last referred to, to the same fines, rents, heriots, and services as had theretofore been payable and of right accustomed in respect thereof: And whereas, A. B., of, &c., claiming to be seised in fee simple in possession of the said manor of ———, the said company in obedience to the direction of the Lands Clauses Consolidation Act, 1845, in this behalf, on or about the ——— day of ——— last applied to him to enfranchise the said pieces or parcels of land and hereditaments, and to convey the same and the timber and underwood thereupon, and the mines and minerals thereunder, unto the said company, whereupon the said A. B. agreed to accept and take the sum of £—— as and by the way of the consideration money for such enfranchisement and conveyance, and for the loss to be sustained by him in respect of the fines, heriots, and other services payable on death, descent, or alienation, or any other matters lost by the vesting of the said pieces or parcels of land and hereditaments in the said company on the enfranchisement thereof: And whereas, on the investigation of the title of the said A. B. to the said manor, his title had been objected to by or on behalf of the said company: And whereas the said A. B. having failed to adduce a good title to the said manor to the satisfaction of the said company, they in obedience to the directions of the Lands Clauses Consolidation Act, 1845, on the ——— day of ——— last, and in further compliance with the directions of the last-mentioned act, paid the sum of £—— sterling (being such purchase or consideration money as aforesaid) into the Bank of England in the name and with the privy of the paymaster-general on behalf of the High Court of Justice,

Chancery Division, to the account there, *Ex parte* the ——— Railway Company, in the matter of the ——— Railway Act, 18— (as appears by the receipt in writing, dated the ——— day of ———, of the cashier of the said bank): Now These Presents Witness that in pursuance and execution of the power in this behalf to the said company given by the Lands Clauses Consolidation Act, 1845, they the said company do hereby declare that the said A. B. hath failed to adduce a good title to the said manor of ——— to their satisfaction, and do hereby further declare that these presents are intended to operate and take effect under the Lands Clauses Consolidation Act, 1845, as a deed poll executed by the said company for the purpose of absolutely vesting in them, their successors and assigns, the said pieces or parcels of land and hereditaments, and all other the lands in respect whereof the above-mentioned sum of £—— has been deposited or paid into the Bank of England as aforesaid, so that the copyhold or customary tenure of the same hereditaments and premises may become and be henceforth extinguished, and the same may be for ever hereafter held by the said company, their successors and assigns, in free and common socage, absolutely enfranchised from all fines, heriots, and other services and customs whatsoever, which, according to the custom of the said manor of ———, the same hereditaments now are, or heretofore have been, subject or liable to or charged with, or which otherwise ought to be paid, done, or performed in respect of the same or any part thereof as hereditaments or tenements holden by copy of court roll of the said manor.

In witness, &c.

THE SCHEDULE.

- (11.) *Conveyance of Rectory Lands, with consent of the Ecclesiastical Commissioners and of the Patron (the Duchy of Lancaster),—the Governors of Queen Anne's Bounty concurring to discharge mortgage.*

THIS INDENTURE, made the ——— day of ———, 19—, between the reverend A. B., rector of the rectory and parish church of ———, in the county of ———, of the first part; the right honourable C. D., chancellor of his Majesty's duchy of Lancaster, of the second part; the Ecclesiastical

Commissioners for England, of the third part; the Governors of the Bounty of Queen Anne for the augmentation of the poor clergy (hereinafter called the said governors) of the fourth part; and E. F., of ———, aforesaid, gentleman, of the fifth part. Whereas the said A. B. is seised in right of his rectory of ——— aforesaid (subject only to the mortgage hereinafter mentioned) of (amongst other hereditaments) the land hereinafter more particularly described and expressed to be hereby conveyed. And whereas the advowson, right of patronage, and nomination of and to the said rectory and parish church is vested in his Majesty in right of and as parcel of the possessions of his said duchy of Lancaster. And whereas under and by virtue of an indenture of mortgage dated the ———, 18—, and made between the reverend ——— therein described as and then being the rector of the said parish church of the one part, and the said governors of the other part, the said land hereinafter more particularly described and expressed to be hereby conveyed, now stands and remains for the now unexpired residue of the term of thirty-five years thereby created subject to a certain mortgage debt payable and secured to the said governors, the original amount of which said mortgage debt was £——, but the amount now being unpaid is £—— only and no more, and the interest payable thereon is at the rate of £4 per cent. per annum. And whereas it has been made to appear to the satisfaction of the said Ecclesiastical Commissioners that the said land may, to the permanent advantage of the estate or endowment belonging to the said rectory, be sold for the sum and in manner hereinafter mentioned. And whereas the said A. B. under the powers enabling him in that behalf contained in the Ecclesiastical Leasing Act, and with the consent of his Majesty as such patron as aforesaid, and with the approval of the said Ecclesiastical Commissioners (respectively testified as hereinafter mentioned) has agreed with the said E. F. for the sale to him of the said land and the inheritance thereof in fee simple in possession free from all incumbrances for the sum of £——, except and reserved and subject as and in manner hereinafter appearing. Now This Indenture Witnesseth, that in pursuance of the said agreement and in consideration of the sum of £—— sterling, before the execution of these presents, paid by the said E. F. into the Bank of England to the account of the said Ecclesiastical Commissioners as directed by them in that behalf, the payment whereof is intended to be acknowledged by the memorandum endorsed on these

presents, He the said A. B. doth hereby (in pursuance and execution of the power enabling him contained in the said Ecclesiastical Leasing Acts, and of every other right power or authority enabling him in this behalf, and with the consent of his Majesty as such patron as aforesaid, such consent being testified by the said C. D. as such chancellor as aforesaid being a party to and executing these presents, and with the approval of the said Ecclesiastical Commissioners testified by their being party and affixing their common seal to these presents) convey, and they the said governors do hereby assign, surrender, and release unto the said E. F. and his heirs, All (*parcels*) to have and to hold (*and so forth*).

PART III.—APPENDIX (*continued*).

(C.) STATUTES.

(*Ancillary to the Copyhold Act, 1894, or otherwise relevant to enfranchisements.*)

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(No. 1.)

11 GEO. IV. & 1 WILL. IV. c. 65.

An Act for Consolidating and Amending the law relating to Property belonging to Infants, Females Covert, Idiots, Lunatics, and Persons of Unsound Mind.

[23rd July, 1830.]

3. From and after the passing of this act, where any person, being under the age of twenty-one years, or being a feme covert or lunatic, is or shall be entitled by descent (or surrender to the use of a last will) or otherwise, to be admitted tenant of any copyhold lands, such person, in

Guardians, &c., empowered to take admittance for infants, &c.

his or her own proper person (or being a feme covert by her attorney; or being an infant by his guardian or attorney, as the case may require; or being a lunatic by the committee of his estate), shall come to and appear at one of the three next courts which shall be kept for the manor whereof such land shall be parcel, and shall there offer himself or herself to the lord or his steward to be admitted tenant to the said land. To make which appearance and to take which admittance in behalf of such infant or lunatic or feme covert, such guardian, committee, or attorney shall be and is hereby respectively authorized and required (a).

Failing
whom,
attorney
appointed
by the
lord.

5. In default of such appearance of any infant, feme covert, or lunatic, in his or her own person (or by his or her guardian, committee, or attorney in that behalf), and of acceptance of such admittance as aforesaid, it shall be lawful for the lord of every such manor, or his steward, after such three several courts have been duly holden for such manor, and proclamations in such several courts being regularly made, to appoint, at any subsequent court to be holden for such manor, any fit person to be attorney (for every such infant, feme covert, or lunatic) *for that purpose only*, and by such attorney to admit every such infant, feme covert, or lunatic to the said land, according to such estate as such infant, feme covert, or lunatic shall be legally entitled to therein; and upon every such admittance to impose and set such fine as might have been legally imposed and set, if such infant had been of full age, or if such feme covert had been sole and unmarried, and if such lunatic had been of sane mind.

Fine, re-
covery of.

6. Upon every such admittance of any infant, feme covert, or lunatic as aforesaid, the fine imposed and set thereupon shall and may be demanded by the bailiff or agent of the lord of such manor, by a note in writing, signed by the lord of such manor or by his steward, to be left with the guardian of such infant (or such infant if he have no guardian), or with such feme covert (or her husband), or with the committee of the estate of such lunatic, [or with the tenant or occupier of the land to which such infant, feme covert, or lunatic shall have been admitted as aforesaid]; and if the fine so imposed and set be not paid or tendered to such lord or his steward within three months after such demand made, then it shall be lawful for the lord of such manor to enter into

(a) *Doe d. Twining v. Muscott*, 12 M. & W. 832.

and upon the copyhold land to which any such infant, feme covert, or lunatic shall be so admitted, and to hold and enjoy the same, and to receive the rents, issues and profits thereof (a), but without liberty to fell any timber standing thereon, for so long time only and until by such rents, issues, and profits such lord shall be fully paid and satisfied such fine, together with all reasonable costs and charges which such lord shall have been put unto in levying and raising the same, and in obtaining the possession of such copyhold land,—although such infant, feme covert, or lunatic shall happen to die before such fine and fines, and the costs and charges aforesaid, shall be raised and collected; of all which rents, issues, and profits so to be received by such lord of such manor, or his steward, bailiff, or servant upon the occasion aforesaid, such lord shall yearly and every year [upon demand to be made by the person who shall be entitled to the surplus of the said rents and profits, over and above what will pay and satisfy such fine and costs and charges, or by the person who shall be then entitled to such copyhold land] give and render a just and true account, and shall pay the same surplus, if any, to such person as shall be entitled to the same.

7. As soon as such fine, and the costs, charges, and expenses aforesaid, shall be fully paid and satisfied, (or if, after such seizure and entry of and upon such copyhold land for the purposes aforesaid, such fine, and the costs and charges aforesaid, shall be lawfully tendered and offered to be paid and satisfied to the lord of such manor,) then and in any of the said cases it shall be lawful for such infant, feme covert, lunatic, or other person entitled thereto (or the guardian of such infant, the husband of such feme covert, or the committee of such lunatic), to enter upon and take possession of and hold the said copyhold land according to the estate or interest such infant, feme covert, or lunatic, shall be lawfully entitled to therein; and the lord of such manor shall (and is hereby required in any of the said cases to) deliver possession thereof accordingly; and if such lord, after such fine and the costs and charges aforesaid shall be fully paid and satisfied (or after the same shall have been tendered or offered to be paid as aforesaid), shall refuse to deliver the

Possession,
restoration
of.

(a) The right here given is in addition to the lord's common law right of seizure *quousque*. (*Dimes v. Grand Junction Canal Co.*, 9 Q. B. 469; 3 H. L. Ca. 794.)

possession of the said copyhold land as aforesaid, he or they shall be liable to (and shall make satisfaction to) the person or persons so kept out of possession, for all the damages that he or she shall thereby sustain, and all the costs and charges that he or she shall be put unto for the recovery thereof.

Guardian,
&c., pay-
ing fine,
&c., his
right of
recoup-
ment.

8. Where any infant, feme covert, or lunatic shall be admitted to any copyhold land, if the guardian of such infant, or husband of such feme covert, or committee of such lunatic, shall pay to the lord of any manor the fine legally imposed and set upon such admittance, and the costs and charges which such lord of such manor shall have been put unto as aforesaid, then it shall be lawful for every guardian of such infant, or husband of such feme covert, or committee of such lunatic, his executors and administrators, to enter into and to hold and enjoy the said land to which such infant, feme covert, or lunatic shall have been so admitted, and receive and take the rents, issues, and profits thereof to his and their own use, until thereby such guardian of such infant, or husband of such feme covert, or committee of such lunatic, his executors and administrators, shall be fully satisfied and paid all and every such sum and sums of money as he shall respectively pay and disburse upon the account aforesaid,—notwithstanding the death of such infant, feme covert, or lunatic shall happen before such sum or sums of money so expended shall or may be so raised and reimbursed.

Forfeiture
for neglect
to take ad-
mittance,
abolished
in the case
of infants,
&c.

9. Provided always, that from and after the passing of this act no infant, feme covert, or lunatic shall forfeit any copyhold land for his or her neglect or refusal to come to any court to be kept for any manor whereof such land is parcel, and to be admitted thereto, nor for the omission, denial, or refusal of any such infant, feme covert, or lunatic to pay any fine imposed or set upon his or her admittance to any such land (a).

(a) The lord's right of seizure *quousque* is merely in the nature of process to enforce payment of the fines (*Doe d. Twining v. Muscott*, 12 M. & W. 832); and by special custom only, and not otherwise, the right might amount to a right to forfeit the copyhold (*Underhill v. Kelsey*, Cro. Jac. 226); which special custom was apparently not good as against an infant, feme covert, idiot, or lunatic (*Sir Richard Lechford's case*, 8 Rep. 100, 106); and this section expressly removes the doubt (if any) in that particular.

10. Provided nevertheless, that if the fine imposed in any of the cases hereinbefore mentioned shall not be warranted by the custom of the manor, or shall be unlawful, then such infant, feme covert, or lunatic shall be at liberty to controvert the legality of such fine, in such manner as he or she might have done if this act had not been made (a).

Remedy,
in case of
extor-
tionate
fine.

(No. 1A.)

53 VICT. C. 5.

An Act to consolidate certain of the Enactments respecting Lunatics. [29th March, 1890.]

125. Where a lunatic so found by inquisition is entitled to be admitted tenant of copyhold land, the committee of his estate may appear at one of the three next courts holden for the manor, and there offer himself to be admitted tenant in the name and on behalf of the lunatic; and in default of his appearance, or of his acceptance of admittance, the lord or his steward may, after three courts duly holden, and proclamations thereat regularly made, at any subsequent court appoint any fit person to be *attorney* (for the lunatic) *for that purpose only*, and by that attorney admit the lunatic tenant of the land, according to such estate as the lunatic is legally entitled to therein.

126.—(1.) The lord or his steward may upon the admittance impose such fine as might have been imposed if the lunatic had been of sound mind,—which fine may be demanded by the lord's bailiff or agent, by a note in writing signed by the lord or his steward, to be left with the committee of the estate, or with the tenant or occupier of the land.

(2.) If the fine is not paid or tendered to the lord or his steward within three months after demand, then the lord may enter upon and hold the land, and receive the rents and profits thereof, (but without liberty to fell any timber standing thereon,) until he is thereby fully paid the fine,

(a) The remedy for an excessive fine (or for excessive fees) is by action to recover the excess; and sometimes by proceeding against the lord (or his steward), as for extortion *colore officii*. (*Traherne v. Gardner*, 5 El. & Bl. 913; 1 Ca. & Opin. 233; 1 Jac. 1. c. 5.)

with his reasonable costs and charges of raising the same, and of obtaining the possession of the land, although the lunatic die before the fine and costs and charges have been raised.

(3.) The lord shall yearly, on demand by the person entitled to the surplus rents and profits, after payment of the fine and costs and charges, or by the person then entitled to the land, render an account of the rents and profits received by him or on his behalf, and shall pay the surplus, if any, to the person entitled thereto.

(4.) As soon as the fine and costs and charges have been fully paid, or if after the lord's entry the fine and costs and charges are lawfully tendered to him, then the lunatic, by the committee of his estate or other the person entitled, may enter upon and hold the land, according to his estate or interest therein; and the lord shall deliver possession thereof accordingly, and if he refuse so to do he shall make satisfaction to the person kept out of possession for all the damages which he thereby sustains, and all his costs and charges of recovering possession.

(5.) If the committee pays the fine and costs and charges, then he, his executors and administrators, may enter upon and hold the land, and receive the rents and profits thereof until payment thereof of the amount disbursed upon that account, although the lunatic die before reimbursement.

(6.) If the fine imposed is not warranted by the custom of the manor, or is unlawful, the lunatic may controvert its legality, as if this Act had not been passed; and no lunatic so found by inquisition shall forfeit any land for his neglect or refusal to appear at any court, or to be admitted thereto, or to pay the fine imposed upon his admittance.

(No. 2.)

2 & 3 WILL. IV. c. 80.

An Act to authorize the identifying of lands and other Possessions of certain Ecclesiastical and Collegiate Corporations.
[3rd August, 1832.]

Boundaries
and acre-
ages of
lands,

WHEREAS the archbishops and bishops of the several dioceses, and the deans, and deans and chapters, archdeacons, prebendaries, and canons, and other dignitaries and officers of the several cathedral and collegiate churches

and chapels, and the masters or other heads, and fellows and scholars or other societies of the several colleges and halls in the universities of Oxford and Cambridge, and of the colleges of Winchester and Eton, are proprietors of divers manors, messuages, lands, tenements, tithes, and hereditaments; and in many cases, the boundaries or quantities and the identity of lands within such manors, and of such messuages, lands, tenements, and hereditaments, and of lands subject to any such tithes, or some part or parts thereof, are unknown or disputed; and it would be a great benefit, as well to such proprietors respectively, as to their lessees (copyhold or customary tenants, sub-lessees, or under-tenants, their, his, or her heirs, executors, administrators, or assigns), if the said manors, messuages, lands, tenements, tithes, and hereditaments were identified, and the boundaries and quantities thereof ascertained and finally settled: Be it enacted, &c.:

1. It shall be lawful to and for any archbishop, &c., to enter into an agreement of reference or deed of submission with his or their lessee or lessees (copyhold or customary tenant or tenants, sub-lessee or sub-lessees, under-tenant or under-tenants, his, her, or their heirs, executors, administrators, or assigns), or with the owner or owners of any other hereditaments adjoining to or intermixed with the said manors, &c., whereby it shall be agreed that any unknown or disputed boundaries or quantities of such manors, &c., shall be referred to the adjudication of such person or persons as may be agreed upon and named by the said archbishop, &c., and by his or their lessees (copyhold or customary tenant or tenants, sub-lessee or sub-lessees, under-tenant or under-tenants, his, her, or their heirs, executors, administrators, or assigns) or by such owner or owners of any other hereditaments, situate as aforesaid; and such referee or referees shall be fully authorized to make (or cause to be made) surveys, maps, and admeasurements of the said manors, &c., or any part thereof, and to summon any persons as witnesses, and examine them on oath (which oath he or they are hereby authorized to administer) touching or concerning any of the matters or things so referred as aforesaid, or in any way relating thereto; and also to call for the production of all surveys, maps, deeds, books, papers, and writings in the custody or power of any of the parties to the said reference, or of any other person or persons, of or concerning the matters in question. And the said referee or referees, having well and sufficiently investigated and

being confused, desirability of defining same.

Determination of boundaries and acreages by award of arbitrators;

on hearing evidence;

award to
have plan
annexed ;

considered the same, and all matters to him or them referred, shall and may make his or their award or awards in writing, under his or their hand and seal or hands and seals, with a map or maps drawn thereupon or thereunto annexed. And which said award or awards and map or maps shall be upon parchment or vellum ; and shall award and determine, identify, delineate, and describe the boundaries, quantities, particulars, and situations of the said manors, &c. ; and the said award or awards and map or maps shall be laid before all the parties to any such agreement of reference or deed of submission, including the party or parties whose consent is required by this act, whose approbation thereof shall be written upon the said award or awards, and shall be signed and sealed by them ; and thereupon the said award or awards and map or maps shall be for ever afterwards binding upon all parties, and final and conclusive as to all matters therein contained or thereby referred to.

the sub-
mission
and award,
to have the
prescribed
consent
thereto.

2. Provided always, that in every case in which any of the powers hereinbefore contained shall be exercised by any bishop, dean, archdeacon, prebendary, or other ecclesiastical corporation sole, the deed of submission or agreement of reference (and also the approbation of the award) shall, in the case of a bishop, be executed by the archbishop of the province testifying his consent thereto ; or, in the case of a dean, the same shall be executed by the dean and chapter testifying their consent thereto ; or in the case of an archdeacon, prebendary, or other ecclesiastical corporation sole, the same shall be executed by the archbishop or bishop of the diocese testifying his consent thereto.

3. (Disabilities of infancy, &c., in lessees, &c.)

Deposit
of sub-
mission,
award and
minutes of
the evi-
dence with
the proper
registrar,
steward,
&c.

4. And immediately after the execution by the parties of the instrument showing their approbation of any award to be made by virtue of this act, the agreement of reference or deed of submission, and also the award or awards and map or maps, authorized to be made by this act (and a copy of the minutes of evidence whereupon the same is made) shall be deposited, in the case of any reference by any archbishop or bishop, in the office of their own registrar ; and in case of any reference by any dean, dean and chapter, archdeacon, prebendary, canon, and other dignitary and officer of a cathedral or collegiate church or chapel, in the office of the registrar of the dean and chapter thereof ; and in case of any reference by any masters or other heads, or by any fellows and scholars, or other societies hereinbefore named, in the office of the

steward or other proper officer of their said colleges and halls; and every such registrar, steward, or other officer, or some person or persons on his behalf, shall produce the documents and papers so deposited with him, or any of them, at all proper and usual hours of business, to every person interested in the subject-matter of such award, or to his or her agent duly authorized, who shall make application to inspect the same or any of them, and shall furnish a copy or copies of the same or any of them to every such person or agent who shall make application for such copy or copies; and every such registrar, steward or other officer shall in every case be entitled to the sum of five shillings and no more for receiving and preserving the agreement of reference or deed of submission, award or awards, map or maps, and copy of the minutes of evidence as aforesaid; and the sum of one shilling and no more for every production of the same or any of them to be inspected; and the sum of sixpence and no more for every folio containing seventy-two words of every copy; and the sum of ten shillings and no more for every copy of a map so made as aforesaid.

Inspection
and de-
livery of
copies of
award, &c.

5. The expenses attending every reference which shall be made under the authority of this act, and all the proceedings hereby required relating to the same, shall be paid and borne by the parties thereto in such manner, shares and proportions as they shall agree; and in case the said parties shall not make any agreement relating to such expenses, then all such expenses, or so much thereof as shall not be provided for by such agreement, shall be paid and borne by the said parties in equal moieties.

Expenses
of arbi-
tration.

(No. 3.)

9 & 10 VICT. c. 70.

An Act to amend the Act (8 & 9 Vict. c. 118) to facilitate the Inclosure and Improvement of Commons.

[26th August, 1846.]

6. Where any copyhold or customary land shall be intermixed or held or occupied together with land of freehold tenure, or with copyhold or customary land held of another manor, or under other customs or titles, and such copyhold or customary land cannot be identified by the

Inter-
mixed
copyholds
and free-
holds.

- Boun-
daries and
acreages to
be defined
by award.
- Award to
have plan
annexed.
- Award to
be ap-
proved by
commis-
sioners.
- Award to
be de-
posited
with lord
of manor.
- description thereof on the rolls of the manor, and the situation or boundaries of such freehold and copyhold or customary land respectively shall be unknown or unascertained, whether such lands shall or shall not be subject to be inclosed under the said recited act (a), and whether any proceedings for an inclosure shall or shall not be pending,—it shall be lawful for the commissioners, upon the application in writing of the persons interested in such lands (and with the consent of the lord or lords of the manor or respective manors of which such copyhold or customary lands should be holden) by order under their seal, to appoint and authorize an assistant-commissioner, or any other person, to award and declare,—What part of the lands so intermixed or held or occupied together, shall be and be deemed copyhold or customaryhold land and freehold land respectively, or shall respectively be held of each such manor, or under each of such customs or titles respectively (or to determine and declare the situation and boundary thereof, as the case may require): And such assistant-commissioner or other person shall frame a draft award, declaring, &c., with a map or plan annexed thereto; and the commissioners may, if they think fit, make such inquiries in relation to the matter of such draft award, or any part thereof, and cause the same to be revised by such assistant-commissioner or other person; and in case such draft award, without or after such revision as aforesaid, shall appear satisfactory to the commissioners, they shall cause the same to be engrossed and to be signed by such assistant-commissioner or other person, and shall approve the same under their seal. And from and after such approval, the land described in such award shall be and be deemed of such tenure, and to be held of such manor, and under such of the said respective customs or titles, as therein declared; and shall be subject to the same services, uses, trusts, and charges as the lands in respect of which they shall be awarded respectively; and a copy of such award shall be delivered to the lord of the manor (or of each manor) to which the same may relate, or his steward, and shall be kept with and deemed part of the court rolls.

(a) 8 & 9 Vict. c. 118.

(No. 4.)

THE ECCLESIASTICAL ESTATES ACT, 1851.

14 & 15 VICT. c. 104.

An Act to facilitate the Management and Improvement of Episcopal and Capitular Estates in England.

[8th August, 1851.]

1. It shall be lawful for any ecclesiastical corporation, sole or aggregate (with the approval in writing of the Church Estates Commissioners, who shall pay due regard to the just and reasonable claims of the present holders of lands under lease or otherwise arising from the long-continued practice of renewal), to SELL to any lessee under any lease granted by such corporation the reversion, estate, and interest of such corporation, in all or any of the lands comprised in such lease,—for such consideration, upon such terms, and in such manner as such corporation and lessee may, with such approval as aforesaid, think fit; and it shall be lawful for any such ecclesiastical corporation (with such approval as aforesaid) to ENFRANCHISE any copyhold or customary land held of any manor belonging to such corporation [or to exchange with any lessee under any lease granted by such corporation, &c., and upon any such exchange either to receive or pay any money by way of equality of exchange], and it shall also be lawful for any such corporation (with such approval as aforesaid) to purchase the estate and interest of any such lessee in any lands belonging to such corporation (or of any holder of copyhold or of customary land of any such manor): Provided that where the estate or interest of any ecclesiastical corporation in any tithes, &c., is proposed to be sold or given in exchange, the Church Estates Commissioners (before they approve such sale or exchange) shall bring the wants and circumstances of the places in which such tithes arise or have arisen under the notice of the Ecclesiastical Commissioners for England; and, where the said Ecclesiastical Commissioners shall so direct, the Church Estates Commissioners shall (as a condition of their approval of such sale or exchange) require such augmentation or provision to be made in respect of the spiritual wants of such place out of the moneys to arise or the property to be taken under such sale or exchange as the said Ecclesiastical Commissioners shall think fit.

Power of ecclesiastical corporations, sole or aggregate, with approval of Church Estates Commissioners, to enfranchise copyhold church lands, or to purchase the interests of their copyholders in such lands.

Provision
for appor-
tionment
of rent on
surrender
of part of
lands com-
prised in
any lease
or copy.

2. Upon the surrender to any ecclesiastical corporation of the estate or interest of any lessee in a part only of the lands comprised in any lease, it shall be lawful for the Church Estates Commissioners, by a memorandum in writing under the hands of such commissioners (which may be indorsed on such lease) to apportion the rent reserved thereby, and declare what part thereof shall continue payable thereunder; and thereupon such apportioned part of the rent shall be payable as if the same had been the rent originally reserved in respect of the lands not surrendered; and . . . the reservations, covenants, and agreements contained in such lease, and the powers and authorities of any such ecclesiastical corporation, so far as the same shall be applicable to the lands not surrendered, shall remain in full force as if such surrender had not been made.

Form of
enfran-
chisement
deed, and
confirma-
tion there-
of by
Church
Estates
Commis-
sioners.

5. Any conveyance, assignment, or other assurance of lands to be made to or by any ecclesiastical corporation upon any sale, ENFRANCHISEMENT, exchange, or purchase under this act, shall be made in such form and manner as the Church Estates Commissioners shall from time to time direct; and shall be confirmed by the Church Estates Commissioners; and, being so confirmed, shall be valid and effectual, and shall not require any other confirmation (as respects the execution of the same by any such ecclesiastical corporation). And no purchaser or other person deriving title under any such assurance so confirmed as aforesaid, upon any sale, enfranchisement, or exchange by an ecclesiastical corporation, shall be concerned to inquire into the propriety of such sale, enfranchisement, or exchange, or the sufficiency of the consideration for the same.

Moneys to
arise from
enfran-
chisement
to be laid
out as
herein
directed.

6. All moneys which, on any sale, exchange, or ENFRANCHISEMENT under this Act, shall be received by (or become payable to or for the benefit of) any ecclesiastical corporation, shall be paid into the Bank of England to such account as the Church Estates Commissioners shall from time to time appoint in that behalf; or such moneys (with the approbation of the Church Estates Commissioners) shall remain at interest as a charge by way of mortgage upon the premises enfranchised, at such a rate for such a period, and upon such terms as the parties, with such approbation as aforesaid, may agree upon; and the receipt of the Church Estates Commissioners shall be an effectual discharge for any money therein expressed to be received. And all moneys so paid into the Bank of England shall be from time to time applied in payment

for equality of exchange as aforesaid, or in such purchases as hereinbefore authorized; or shall be laid out by such corporation, with such approval as aforesaid, in the purchase of other lands, to be conveyed to the use or for the benefit of such corporation; and the moneys from time to time remaining unapplied for the purposes aforesaid shall be invested by and in the names of the Church Estates Commissioners in the purchase of Government stocks, funds, or securities; and such Church Estates Commissioners may sell and dispose of the same for the purposes of this Act as occasion may require; and the interest, dividends, and annual proceeds of such moneys, stocks, funds, and securities shall be paid to the corporation which would for the time being have been entitled to the rents and profits of the lands sold, enfranchised, or exchanged, subject to the provisions herein contained.

8. If it appear to the Church Estates Commissioners that by means of any sale, ENFRANCHISEMENT, exchange, purchase, or investment under the powers of this act, the income which any person, being an ecclesiastical corporation sole, or member of an ecclesiastical corporation aggregate, might have received if this act had not been passed, has been or may be *increased*, it shall be lawful for the Church Estates Commissioners to require, in respect of such increase, payment to be made (either immediately or upon any contingency) to the Church Estates Commissioners, by or on account of the person receiving such increase during his incumbency, of such annual or other sum as the Church Estates Commissioners may, under the circumstances of each case, think proper, and to enforce such payment by an action of debt to be brought in the name of the Ecclesiastical Commissioners for England. And where it appears to the Church Estates Commissioners that by means of any such sale, ENFRANCHISEMENT, exchange, purchase, or investment the income which any such person might have received has been *diminished*, such commissioners shall, out of any moneys received by them under this act on behalf of such corporation, or the investments thereof, pay to such person from time to time such annual or other sum as to such commissioners may appear sufficient to make up the deficiency caused by such diminution.

Provision in case of increase or deficiency of income in consequence of enfranchisements, &c.

11. In the construction of this act, &c.:

The expression "ecclesiastical corporation" shall include every archbishop, bishop, dean and chapter, dean, archdeacon, canon, prebendary, and other dignitary or officer of any cathedral or collegiate

Definition clause.

church in England and Wales, and every minor ecclesiastical corporation in any such cathedral or collegiate church, but shall not include the dean and canons of the cathedral church of Christ in Oxford, or any college or hospital, or any parson, vicar, or perpetual curate, or other incumbent of any benefice (a).

The word "lease" shall include grant by copy of court roll :

The word "lands" shall include tithes and tithe rent-charges, and other tenements and hereditaments corporeal and incorporeal (except advowsons) :

The word "lessee" shall include any person or body corporate in whom any subsisting lease or grant, or the term or estate thereby granted in the whole or in any part of the lands comprised in such lease, is, either by the original grant or demise, or by assignment, devise, or operation of law, for the time being vested.

(No. 5.)

THE ECCLESIASTICAL ESTATES ACT (1851) AMENDMENT ACT, 1854.

17 & 18 VICT. c. 116.

An Act to continue and amend an Act to facilitate the Management and Improvement of Episcopal and Capitular Estates in England.

[11th August, 1854.]

Appor-
tionment
of rent,
on the en-
franchise-
ment, &c.,
of part of
a copyhold
tenement
(ecclesi-
astical).

2. The powers and provisions contained in the second section of the Act of 1851 shall extend to all cases in which, on the sale, exchange, or ENFRANCHISEMENT under the authority of the said act, or of this act, of a part only of any lands or other hereditaments comprised in any lease or copy of court roll, the Church Estates Commissioners may deem it expedient to apportion the rent reserved by or payable under the lease or grant to the ecclesiastical corporation by whom such lease or grant may have been made.

(a) The 24 & 25 Vict. c. 105, s. 3, has now extended the provisions of this act to rectors, vicars, perpetual curates, and incumbents generally.

3. [Enables trustees who under the settlement have power to raise money for the purpose of procuring a renewal of a lease or copy, to raise money for the purpose of purchasing the reversion, or of otherwise enfranchising the property comprised in the lease or copy.]

4. [Provides for the appointment of arbitrators and an umpire for the purpose of ascertaining the annual and the fee simple values of the hereditaments, on the occasion of an intended sale, ENFRANCHISEMENT, or exchange.]

5. Notwithstanding anything to the contrary, &c., whenever a right of renewal of any lands held for a life or lives or for years by copy of court roll from or under any ecclesiastical corporation shall be disputed by such ecclesiastical corporation or by the Church Estates Commissioners (or whenever the person or persons claiming to be interested in any such lands shall be desirous of having the right of renewal decided by a competent tribunal), then, and in either of the said cases, it shall be lawful for such person or persons to cause an action to be brought in any of her Majesty's superior courts of law at Westminster, in which action such person or persons shall be plaintiff or plaintiffs, and the Church Estates Commissioners, together with the Ecclesiastical corporation from or under whom such copyhold or customary lands shall be held, shall be the defendants; and in which action (an issue is to be settled, with the aid, if need shall be, of the Court); and the parties in such action shall produce to each other, their respective attorneys or counsel, at such time as any judge may order, before trial, and also to the court and jury, upon the trial of any such issue, all books, deeds, court rolls, papers and writings, terriers, maps, plans and surveys relating to the matters in issue in their respective custody or power; and it shall be lawful for the judge by whom any such action shall be tried, if he shall think fit, to direct the jury to find a verdict, subject to the opinion of the court, upon a special case; and the verdict which shall be given in any such action, or the judgment of the court upon the case, subject to which the same may be given, shall be final and binding upon all parties thereto, unless the court wherein such action shall be brought shall set aside such verdict and order a new trial to be had therein, which it shall be lawful for the said court to do if it shall see fit. Provided always, that after such verdict given and not set aside by the court, or after such decision of the court, the said ecclesiastical corporation and the Church Estates Commissioners shall be bound

Rights of renewal, determination of disputes regarding, and establishment thereof.

By action in High Court, in which issue of law or of fact is to be settled. Production of books, &c.

Judgment, final.

Costs, and
execution
for.

by such verdict or decision; and the costs of every action and of obtaining a decision thereon, shall be in the discretion of the court in or by which the same shall be decided, provided also, that in every case in which the costs or any part of the costs of or incident to any action to be brought under the provisions of this act shall become payable by the defendants in such action, it shall be lawful for the Church Estates Commissioners, and they are hereby required to pay such costs out of any surplus moneys coming or which have come or may come to their hands in respect of the estates of such corporation under the provisions of the said recited act or this act.

The old
income,
receivable
by eccle-
siastical
corpora-
tion before
the en-
franchise-
ment, &c.,
to be main-
tained.

6. The provisions contained in the sixth section of the said act, relative to the investment and application of the moneys which are to be paid into the Bank of England as thereby directed, shall be subject to the following provisions; that is to say, the provisions contained in the eighth section of the said act, which direct the Church Estates Commissioners to require certain payments to be made to them by or on behalf of persons being ecclesiastical corporations sole or members of the ecclesiastical corporation aggregate, shall be extended so as to authorize and require the same commissioners to apportion every sum of money paid or to be paid into the Bank of England under the provisions of the said act or of this act, so as to set apart for the permanent endowment of such corporation sole or aggregate a share of such sum of money sufficient to secure to such corporation a permanent net income equal to that which, if the said act or this act had not been passed, would have been received by such corporation from the property by the enfranchisement whereof such money was produced, and the Church Estates Commissioners shall pay over the remainder of such sum of money to the common fund of the Ecclesiastical Commissioners for England.

9. [A supplementary arbitration clause, for the ascertainment of the annual and fee simple values, due regard being had to the long-continued practice of renewal.]

Value of
right of
renewal,
how to
be ascer-
tained.

11. In computing the due regard to be paid to the . . . long-continued practice of renewal, the basis of compensation may, at the discretion and with the approval of the Church Estates Commissioners, be that laid down by the Episcopal and Capitular Revenues Commissioners in their Report of 1850, or according to the recommendations laid down in the Lords' Report on the same subject, 1851.

12. In all computations in any way dependent on the duration of lives, the expectation of life shall not be calculated according to the tables commonly known as the Northampton Tables, nor upon tables less favourable to the expectation of life than the life tables which are appended to the twelfth annual report of the registrar-general of births, deaths, and marriages in England, nor than any table which may be from time to time issued by the same authority.

“Expectation of life,” mode of calculating.

(No. 6.)

THE UNIVERSITIES AND COLLEGE
ESTATES ACT, 1858.

21 & 22 VICT. c. 44.

An Act to give to the Universities of Oxford, Cambridge, and Durham, and the Colleges in those Universities, and to the Colleges of St. Mary of Winchester, near Winchester, and of King Henry the Sixth at Eton, Power to Sell, Enfranchise, and Exchange Lands under certain Conditions, and also to grant Leases, &c.
[23rd July, 1858.]

1. It shall be lawful (a) for the said universities (and for any college therein respectively) and for the colleges of St. Mary of Winchester, near Winchester, and of King Henry the Sixth at Eton (with the consent of the Copyhold Commissioners) to SELL any estate in lands, &c., and also (with such consent as aforesaid) to ENFRANCHISE any copyhold or customary lands held of any manor belonging to such universities respectively, or any such college [or to exchange any estate in lands for any other lands, whether the same shall be of a like nature or not, and upon any such exchange to receive or pay any money by way of equality of exchange]; and all moneys which on any such sale, enfranchisement, or exchange shall be received by or become payable to or for the benefit of such universities respectively, or for any such college, shall from

Power for the universities and colleges, with the consent of the Copyhold Commissioners, to enfranchise, &c., the university or college lands.

(a) This first section purports to have been repealed by sect. 8 of the College Act, 1898, hereafter set forth.

The consideration for enfranchisement, &c., to be paid into the bank to the specified account. Application of the consideration moneys; and interim investment thereof;

and application of the interim dividends thereon.

Order of commissioners authorizing the proposed enfranchisement, &c.

time to time be paid into the Bank of England for the benefit of such universities respectively, or of any such college, to an account to be entitled, "The Account of the Copyhold Commissioners, *Ex parte* the University or the College for whose benefit such moneys shall have been so paid in [*describing such university or college by its corporate name*] in the matter of this Act"; and the receipt of the said Copyhold Commissioners shall be an effectual discharge to any purchaser or other person for any money therein expressed to be received. And all money so paid into the Bank of England shall be (applicable and be applied in payment for equality of exchange as aforesaid, or shall be) laid out by such university or college, with such consent as aforesaid, in the purchase of other lands, &c.; and the moneys from time to time remaining unapplied for the purposes aforesaid shall be invested by and in the names of the said Copyhold Commissioners, to the account aforesaid, in the purchase of Government stocks, funds, or securities which the said Copyhold Commissioners shall hold in trust for such university or college; and the said Copyhold Commissioners may sell and dispose of the same, for the purposes of this act, as occasion may require; and in the meantime, the interest, dividends, and annual proceeds of such moneys, stocks, funds and securities shall be paid to such university or college, to be applied to the same purposes as the annual income was applicable which arose out of the lands from the sale, enfranchisement, or exchange of which the money invested in such stocks, funds, or securities was produced. Provided that, except as hereafter is mentioned, nothing in this section contained shall apply to any estates of the universities respectively, or of any such college as aforesaid, in reversion in lands expectant upon any lease for a life or lives (or for a term of years determinable upon any life or lives) or for a term of years whereof more than seven shall be unexpired, on which a rent less than three-fourths of the clear yearly value of such lands shall have been reserved, except where the lessee has a right of renewal.

2. The consent hereinbefore required to be given by the Copyhold Commissioners to any sale, enfranchisement, or exchange to be effected under the authority of this act, shall be evidenced in manner following (that is to say), the said commissioners [upon consideration of the proposed sale, enfranchisement, or exchange, and the REPORT *thereon of the surveyor of the university or college* proposing the same, and being satisfied as to the propriety

thereon] shall issue an ORDER under their hands and the common seal of their board, authorising such proposed sale, enfranchisement, or exchange to be carried into effect by the university or the college making application under the provisions of this act; and the consent of the said commissioners hereinbefore required to the re-investment of the moneys to be received upon any such sale, enfranchisement, or exchange in the purchase of other lands, shall also be evidenced by a similar order to be issued by the said commissioners in manner aforesaid, approving of the proposed purchase, and authorising the university or college (as the case may be) to carry the same into effect. And it shall not in any case be necessary that the said commissioners should be made parties to, or should execute, any conveyance, assignment, or other assurance to be made by such university or college for effecting any sale, enfranchisement, exchange, purchase, or mortgage under the powers of this act, or satisfy themselves as to the title of any lands the subject of any such exchange or purchase: provided that, &c., all costs and expenses of and incidental to the obtaining such consent shall be borne by the university or college requiring the same.

Order of commissioners authorizing proposed reinvestment in other lands. Commissioners not to be made concurring parties to enfranchisement deed. Valuation and plan, may be required.

(No. 6A.)

THE UNIVERSITIES AND COLLEGE ESTATES ACT, 1898.

61 & 62 VICT. C. 55.

An Act to amend the Universities and College Estates Acts, 1858 to 1880. [12th August, 1898.]

1. For the purposes of sale, ENFRANCHISEMENT, exchange, partition, and leasing, a university or college may exercise any of the powers conferred on a tenant for life by the Settled Land Acts, 1882 to 1890; and for these purposes, the provisions of those Acts mentioned in Part I. of the First Schedule to this Act (a) shall apply accordingly, subject to the modifications mentioned in Part II. of this Schedule (b). Provided that (a) the

(a) The usual enabling conditions.

(b) These modifications are purely verbal.

powers of sale, ENFRANCHISEMENT, exchange, and partition, and the power of granting building leases with option of purchase, *shall not be exercised without the consent of the Board of Agriculture*; and (b) capital money payable on any such sale, ENFRANCHISEMENT, exchange, or partition, or on the exercise of any such option, *shall be paid to the Board of Agriculture*.

2.—(1.) Capital money paid, whether before or after the commencement of this Act, to the Board of Agriculture, under the Universities and College Estates Acts, 1858 to 1880, or this Act (or arising under section twenty-one of the Universities and College Estates Acts, 1858), and the proceeds of sale of securities representing any such money, may, *with the consent of the Board of Agriculture*, be applied by a university or college to any of the following purposes:—(i.) the investment (*in the name of the Board*) on any securities in which trustees are by law authorised to invest trust money; and (ii.) the purposes mentioned in the Second Schedule to this Act (c); and (iii.) the purchase of the interest of a lessee [or copyholder] under a lease from the university or college.

(2.) The income of any such securities shall be paid or applied as the income of the land represented by the securities would have been payable or applicable.

(3.) Land purchased under this section shall be conveyed to the university or college, to be held to uses or upon trusts corresponding to the purposes for which the capital money or proceeds of sale of securities applied in the purchase were held (except that copyhold land may be conveyed to trustees).

(4.) Where the purpose to which money may be applied under this section is of such a nature that, in the opinion of the Board of Agriculture, provision ought to be made for replacing the money within a limited time, the Board shall, in giving their consent to the application, require provision to be so made.

5. The Board of Agriculture may, if they think fit, in giving their consent to a sale, exchange, purchase, or redemption of any land tax, tithe, rentcharge, crown rent, chief rent, or quit rent, by a university or college, *dispense with a report from the surveyor of the university or college*.

6.—(1.) Where the purchase, consideration, or compensation money payable in respect of any land belonging

(c) These are the usual purposes.

to a university or college, is directed by any act of Parliament to be paid into court, or either into court or to trustees, the money shall (at the option of the university or college) be paid either as directed by the Act or to the Board of Agriculture.

(2.) Where any such money has been paid (either before or after the commencement of this Act) either into court or to trustees on behalf of a university or college, that sum (or the securities representing it) may, if in court, on the application of, and if held by trustees by the direction of, the university or college, be paid or transferred to the Board of Agriculture.

(3.) Money paid and securities transferred to the Board of Agriculture, under this section, on behalf of a university or college, shall be treated as capital money paid to the Board under this Act and as securities representing money so paid.

(No. 7.)

THE COMMONS ACT, 1876.

39 & 40 VICT. c. 56.

An Act for facilitating the Regulation and Improvement of Commons, and for amending the Acts relating to the Inclosure of Commons. [11th August, 1876.]

WHEREAS by the Inclosure Acts, 1845 to 1868, upon the application and with the consent of such of the persons interested in any common as in the said acts in that behalf specified, the Inclosure Commissioners are empowered by provisional order under their seal to authorise the inclosure of such common, provided such inclosure is made on such terms and conditions, &c., and provided, also, that the commissioners are of opinion that such inclosure would be expedient, having regard as well to the health, comfort and convenience of the inhabitants of any cities, towns, villages, or populous places in or near any parish in which the land proposed to be inclosed, or any part thereof, may be situate (hereinafter included under the expression *the benefit of the neighbourhood*) (a), as to the

Matters to be considered by the commissioners on any intended inclosure ;
(a) the benefit of the neighbourhood ;

(a) The act (s. 8) requires that, as regards any common (or part of a common) which is situate (either wholly or in part) in

and (b) the private interests.

advantage of the persons interested in the common to which such application relates (hereinafter included under the expression *private interests*), but such provisional order is of no vitality until the commissioners have in a report to be laid before Parliament certified that in their opinion the inclosure of such common, if made on the terms and conditions in their provisional order expressed, would be expedient, having regard to the benefit of the neighbourhood as well as to such private interests as aforesaid, nor until an act of parliament has been passed confirming such order and affirming such certificate as aforesaid, and directing that the proposed inclosure of the common should be proceeded with accordingly.

And whereas by the said Inclosure Acts, information is required to be supplied and inquiries to be made for the purpose of enabling the Inclosure Commissioners to judge of such expediency as aforesaid, but it is desirable to make further provisions for bringing under the notice of the said commissioners and of Parliament any circumstances bearing on the expediency of allowing the Inclosure of a common, *and that INCLOSURE in severalty, as opposed to REGULATION of commons, should not be hereinafter made unless it can be proved to the satisfaction of the said commissioners and of Parliament, that such inclosure will be of benefit to the neighbourhood as well as to private interests, and to those who are legally interested in any such commons.*

Recreation grounds and field-gardens, when waste of manor inclosed.

And whereas by the said Inclosure Acts the commissioners are empowered, in the case of a common being waste land of a manor, to require, and in their provisional order to specify, as one of the conditions of inclosure, the appropriation of an allotment for the purposes of exercise and recreation by the inhabitants of the neighbourhood, and also of an allotment for the labouring poor; and it is

(or within six miles of) any town having 5,000 inhabitants, notice of any application under the act to the Board of Agriculture shall be given to the urban sanitary authority (now either the borough council or the urban district council). And as regards all commons whatsoever,—and as regards every application whatsoever (to the Board of Agriculture) touching or concerning the common in any way,—the Local Government Act, 1894 (56 & 57 Vict. c. 73) requires that notice of the application shall be given to the council of every parish in which any part of the common is situate (s. 8, sub-s. 4), and also to the district council (whether urban or rural) for the district within which the common is situate (s. 26, sub-s. 2).

expedient to give further effect to the provisions relating to the said allotments (in this act referred to as allotments for recreation grounds and field gardens).

10. The following rules shall be observed (with respect to an application to the Inclosure Commissioners for a provisional order for the regulation or inclosure of a common), that is to say:—

(4.) The information to be furnished,—as bearing on the expediency of the application considered in relation to *the benefit of the neighbourhood*,—shall comprise statements as to the particulars following, that is to say:—As to the number and occupations of the inhabitants of the parish or place in which the common is situate; as to the population of the neighbourhood, and the distance of the common from any neighbouring towns and villages; as to the intention of the applicants to propose the adoption of all or any of the statutory provisions as defined by this act for the benefit of the neighbourhood; as to the circumstance of any ground other than the common to which the application relates being available for the recreation of the neighbourhood; and in the case of a common being waste land of a manor, as to the site, extent, and suitability of the allotments, if any, proposed to be made for recreation grounds and field gardens, or for either of such purposes, and as to any other matter which, in the judgment of the Inclosure Commissioners, may assist them in forming an opinion as to whether such application ought to be acceded to, having regard to the benefit of the neighbourhood, and, if acceded to, as to what statutory provisions as defined by this act ought to be inserted in the provisional order for the benefit of the neighbourhood. The Inclosure Commissioners shall also require, in the case of an application for inclosure, special information as to the advantages the applicants anticipate to be derivable from the inclosure of a common as compared with the regulation of a common; also, the reasons why an inclosure is expedient when viewed in relation to the benefit of the neighbourhood.

(5.) The information to be furnished,—as bearing on the expediency of the application considered in relation to *private interests*,—shall comprise statements as to the several particulars following, that is to say:—As to the extent and nature of the common to which the application relates; as to the mines, minerals, or valuable strata (if any) under the same; as to the questions of boundary (if any) concerning such common or such mines, minerals, or strata; as to the parties interested in such common,

Further matters to be considered by the commissioners,

(1) In relation to the "*benefit of the neighbourhood*."

(2) In relation to the "*private interests*."

and the numbers and proportion in value of interests, who have consented to or dissented from the application; as to the nature of the rights requiring the intervention of the Inclosure Commissioners or the interference of Parliament; as to the supposed advantages of the application being acceded to; as to (in cases where the interest of any lord of the manor in the soil of a common or in mineral or other rights may be affected by the provisional order applied for) the allotment (if any) or compensation agreed on or proposed to be made to such lord of the manor in respect of his interest so affected; and as to any other matter which, in the judgment of the Inclosure Commissioners, may assist them in forming an opinion as to whether such application ought to be acceded to having regard to private interests, and if acceded to, as to what provisions ought to be inserted in the provisional order for the protection of private interests.

Lord's approval of common, under the statute of Merton, three months' notice to be given of intention to approve.

31. Any person intending to inclose or approve a common, or part of a common, otherwise than under the provisions of this act, shall give notice to all persons claiming any legal right in such common or part of a common, by publishing at least three months beforehand a statement of his intention to make such inclosure, for three successive times, and in two or more of the principal local newspapers in the county, town, or district in which the common or part of a common proposed to be inclosed is situate; but the provisions of this section shall not apply to any commons or waste lands whereon the rights of common are vested solely in the lord of the manor (b).

(No. 7A.)

56 & 57 VICT. C. 57.

An Act to amend the Law relating to Commons.

[22nd September, 1893.]

2. An inclosure or approvement of any part of a common, purporting to be made under the statute of Merton and the statute of Westminster the second (or

(b) And this notice by advertisement is, of course, additional to (and does not supersede the necessity of giving) the specific notices required by the Commons Act, 1876, and by the Local Government Act, 1894, as explained in note (a), p. 463, *supra*.

either of such statutes) shall not be valid, unless it is made with the consent of the Board of Agriculture.

3. In giving or withholding their consent under this act, the Board shall have regard to the same considerations (and shall, if necessary, hold the same enquiries) as are directed by the Commons Act, 1876, to be taken into consideration (and held by the board) before forming an opinion, whether an application under the Inclosure Acts shall be acceded to or not (a).

(No. 7B.)

THE COMMONS ACT, 1899.

62 & 63 VICT. c. 30.

An Act to amend the Inclosure Acts, 1845 to 1882, and the Law relating to Commons and Open Spaces.

[9th August, 1899.]

1.—(1) The council of an urban or rural district may make a scheme for the regulation and management of any common within their district [and so forth].

(3) The scheme shall be in the prescribed form [&c.].

2.—(1) Not less than three months before the making of the scheme, the council shall give the prescribed notice of their intention to make it [&c.].

(3) After the expiration of the said three months, the Board of Agriculture shall take into consideration any objections or suggestions so made [&c.].

(4) The Board of Agriculture may by order approve of the scheme, subject to such modifications, if any, as they may think desirable; and thereupon the scheme shall have full effect.

Provided that if, at any time before the Board have approved of the scheme, they receive a written notice of dissent, either (a) from the person entitled as lord of the manor or otherwise to the soil of the common; or (b)

(a) The notice by advertisement prescribed by the Commons Act, 1876, s. 31, and also the specific notices referred to in the note at foot of p. 464, *supra*, must, of course, have been duly given of the application (or of the intended application) to the Board for its consent.

from persons representing at least one-third in value of such interests in the common as are affected by the scheme,—and such notice is not subsequently withdrawn,—the Board shall not further proceed in the matter.

6. No estate, interest, or right of a profitable or beneficial nature in, over, or affecting any common shall, except with the consent of the person entitled thereto, be taken away or injuriously affected by any scheme under this part of this Act,—without compensation being made or provided for the same by the council making the scheme; and such compensation shall, in case of difference, be ascertained and provided, in the same manner as if it were for the compulsory purchase and taking, or the injurious affecting, of lands under the Lands Clauses Acts.

(No. 8.)

THE COPYHOLD, &c. ACTS (COMMISSIONERS' COSTS) ACT, 1868.

31 & 32 VICT. c. 89.

An Act to alter certain Provisions in (among other Acts) the Copyholds Acts, &c.; and to make Provision towards defraying the Expenses of the Copyhold, &c. Office. [31st July, 1868.]

Security for commissioners' costs of local inquiry.

1. That notwithstanding any provisions in the said acts contained, in all proceedings upon application made under any of the said acts by any person or persons interested within the meaning of the same in which it is necessary or expedient, in the opinion of the commissioners, that an inquiry should be made by an assistant commissioner, and a meeting held by him, the commissioners, before they refer the same to such assistant commissioner, shall take such security as they shall deem right for the payment of any costs which they may incur in the matter of such inquiry and meeting, including all expenses of such assistant commissioner's attendance; provided always, that it shall not be necessary for the commissioners to take security for the costs which they may incur relating to any inquiry which they may think it right to make under section twenty-two of "The Copyhold Act, 1852."

Not being an inquiry under the Act of 1852, s. 22.

3. In all cases in which any dispute as to the expenses incidental to an enfranchisement or as to the compensation to be paid to the steward shall be referred to the commissioners for their certificate, the costs incurred by them in ascertaining the same shall be paid to the commissioners, either by the person making such reference or applying for such certificate, or by the person whose costs are so taxed, as the commissioners by order under their hands and seal may direct; and such order shall state the amount of such costs; and the commissioners shall have power, by application to any county court, to recover the same from the person liable under such order, together with all costs of such application; and such order shall be conclusive evidence of such debt.

6. The commissioners shall, as soon as conveniently may be after the passing of this act, prepare a table or tables of fees to be taken in respect of the business transacted under the acts administered by them; and such table of fees shall be subject to the approval of the Lords Commissioners of her Majesty's Treasury; and the commissioners may, with the like approval, from time to time alter, amend, add to, or reduce such fees or any of them; and every such table of fees, and every such alteration, amendment, addition or reduction in, to, or of the same, shall be published in the London Gazette, and shall be laid before Parliament; and all fees payable in accordance with such table or tables shall be received by stamps denoting the amount of fee payable, and not in money (a).

Commissioners' costs of settling disputed expenses of enfranchisement, or disputed compensation to steward, on a reference of such disputes to them, recovery of, in county court, on commissioners' order to pay.

Table of fees, to be prepared by the commissioners.

Fees to be taken by stamps.

(a) The following *Table of Office Fees* was issued under the act,—and presumably it is (with only verbal amendments) still in force,—that is to say:—

On enfranchisements,—		£	s.	d.
Where the enfranchisement consideration money does not exceed £1.....		0	5	0
Or exceeding £1 does not exceed £5		0	10	0
„ 5	„ 10	1	0	0
„ 10	„ 15	1	10	0
„ 15	„ 20	2	0	0
„ 20	„ 25	2	10	0
„ 25	„ 50	3	0	0
„ 50	„ 75	3	10	0
„ 75	„ 100	4	0	0
„ 100	„ 125	4	10	0
„ 125	„ 150	5	0	0
„ 150	„ 175	5	10	0

(No. 9.)

52 & 53 VICT. c. 30.

An Act for establishing a Board of Agriculture for Great Britain. [12th August, 1889.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present Parliament

	£	s.	d.
Or exceeding £175 does not exceed £200	6	0	0
" 200 " 250	6	10	0
" 250 " 300	7	0	0
" 300 " 350	7	10	0
" 350 " 400	8	0	0
" 400 " 450	8	10	0
" 450 " 500	9	0	0
" 500 " 550	9	10	0
" 550 " 600	10	0	0
For every additional £100 or part of £100	0	10	0
Where the enfranchisement consideration is a rent-charge, the fee will be computed on the value of the rent-charge calculated at 25 years' purchase.			
Where the enfranchisement consideration is land, the fee will be computed on the fee simple value of the land.			
Where the enfranchisement terms are fixed by the commissioners on agreed data at the request of the parties, a fee of			
On every certificate of charge on property enfranchised, a fee of	1	0	0
On every certificate fixing the sum of money in consideration of which a rent-charge may be redeemed, a fee of	0	10	0
On every consent by the commissioners to the application of enfranchisement money (or the stock in which it may be invested) to the purchase of land. For every £50 or part of £50 expended...	0	2	6
On every decision by the commissioners or an assistant commissioner, a fee of	2	0	0
On every award defining the boundaries of lands for the purpose of enfranchisement, a fee of	5	0	0
On the amendment of any award or deed of enfranchisement, or other instrument confirmed under the Copyhold Acts, a fee of	2	0	0

assembled and by the authority of the same, as follows :

1.—(1.) There shall be established a Board of Agriculture consisting of the Lord President of the Council, her Majesty's principal Secretaries of State, the First Commissioner of her Majesty's Treasury, the Chancellor of her Majesty's Exchequer, the Chancellor of the duchy of Lancaster, and the Secretary for Scotland, and such other persons (if any) as her Majesty may from time to time think fit to appoint during her Majesty's pleasure: Provided that the board shall not be entitled to act unless the president or one of the officers of state above-mentioned is present.

Constitution of board.

(2.) It shall be lawful for her Majesty the Queen from time to time to appoint any member of the Privy Council to be president of the board during her Majesty's pleasure.

(3.) The board shall be deemed to be established on the appointment of the president thereof.

2.—(1.) There shall be transferred to the Board of Agriculture—

Powers, &c., transferred to board.

(a) The powers and duties of the Privy Council (relative to the Contagious Diseases (Animals) Acts) :

(b) The powers and duties of the Land Commissioners for England under the acts mentioned in Part 2 of the first schedule to this act or under any other act, whether general, local and personal, or private, [and which acts comprise (among others) the Copyhold Acts 1841—1887, and now of course the Copyhold Act, 1894]; and

(c) On such date as shall be fixed by the Commissioners of her Majesty's Treasury, all powers and duties vested in the Commissioners of her Majesty's Works and Public Buildings under the Survey Act, 1870.

5.—(1.) The Board of Agriculture may from time to time appoint a secretary and such officers and servants as the board may, with the sanction of the Treasury, determine.

Officers of board.

(2.) There shall be paid out of the money provided by Parliament to the President,—if not one of the officers of state above-mentioned nor any other officer of state receiving a salary,—the annual salary of £2,000 a year, and to the secretary, officers, and servants of the board, such salaries or remuneration as the Treasury may from time to time determine.

(3.) All expenses incurred by the Board of Agriculture in the execution of their duties under this act to such

Expenses of board.

amount as may be sanctioned by the Treasury shall be paid out of the money provided by Parliament.

6.—(1.) The Board of Agriculture may sue and be sued, and may for all purposes be described, by that name.

Seal of
board.

(2.) The board shall have an official seal which shall be officially and judicially noticed, and such seal shall be authenticated by the signature of the president or some member of the board or of the secretary or of some person authorized by the president of the board to act on behalf of the secretary.

Orders,
&c.,
proved by
seal of
board.

7.—(1.) Every document purporting to be an order, licence, or other instrument issued by the Board of Agriculture and to be sealed with the seal of the board authenticated in manner provided by this act, or to be signed by a secretary or any person authorized by the president of the board to act on behalf of the secretary, shall be received in evidence and be deemed to be such order, licence, or instrument, without further proof, unless the contrary is shown.

Certifi-
cates of
board.

(2.) A certificate signed by the president or any member of the Board of Agriculture, that any order, licence, or other instrument purporting to be made or issued by the board is so made or issued shall be conclusive evidence of the fact so certified.

Officers,
transfer
of ;

9.—(1.) There shall be transferred and attached to the Board of Agriculture such of the persons employed under the Privy Council or any other Government Department in or about the execution of the powers and duties transferred by or in pursuance of this act to the Board of Agriculture as the Privy Council or Government Department with the sanction of the Treasury determine.

(2.) There shall be transferred to the Board of Agriculture all persons employed under the Land Commissioners for England.

and dis-
tribution
of duties
among.

(3.) The Board of Agriculture may from time to time distribute the business of the board amongst the several persons transferred thereto in pursuance of this act in such manner as the board may think right, and those officers shall perform such duties in relation to that business as may be directed by the board.

Provided that such persons shall, while they continue in office, be in no worse position as respects their tenure of office, salaries, or superannuation allowances, than they would have been in if this act had not passed.

(4.) Any order in council made in pursuance of this act which transfers any powers or duties to the Board of

Agriculture shall extend this section to the persons employed in or about the execution of those powers and duties.

11.—(1.) In the construction and for the purposes of any Act of Parliament, judgment, decree, order, award, deed, contract, or other document passed or made before the establishment of the Board of Agriculture, but so far only as may be necessary for the exercise of the powers or the discharge of the duties by this act or any order in council made in pursuance thereof transferred to that board, the name of the board shall be substituted for the Privy Council, Land Commissioners for England, Enclosure Commissioners for England and Wales, Copyhold Commissioners, Tithe Commissioners for England and Wales, or other Commissioners or Government Department as the case may require, and anything authorized or required to be done by, to, or before an assistant-commissioner of any of the above-named commissioners may be lawfully done by any officer of the Board of Agriculture for the time being assigned for that purpose.

Interpretation, &c.

(2.) Where anything has been commenced by or under the authority of the Privy Council, Land Commissioners, or other Government Department, before the transfer to the Board of Agriculture of any powers or duties by or in pursuance of this act, and such thing is in relation to the powers or duties so transferred, such thing may be carried on and completed by or under the authority of the Board of Agriculture.

(3.) Where, at the time of transfer of any powers or duties by or in pursuance of this act, any legal proceeding is pending to which the Privy Council, Land Commissioners, or other Government Department are parties, and such proceeding has reference to the powers and duties transferred by or in pursuance of this act, the Board of Agriculture shall be substituted in such proceeding for the Privy Council, Land Commissioners, or other Government Department, and such proceeding shall not abate by reason of such substitution.

14. This act may be cited as the Board of Agriculture Act, 1889.

PART III.—APPENDIX (*continued*).(D.) THE CASE OF *HUMPHREYS* v.
BLYTHER (1878 H., No. 771).

. Upon a recent inquiry (Midsummer, 1899), before an umpire chosen by the two valuers who had been appointed under the Copyhold Act, 1894, for the purpose of ascertaining the compensation payable to the lord for the enfranchisement of a copyhold public-house (fine arbitrary) situate at Edmonton, in the County of Middlesex, this case was brought to the notice of the umpire; and he acted upon it; and a report of the case seems desirable,—the decision being *a decision of the Court of Appeal*, and upon a point of the very first importance.

HUMPHREYS v. *BLYTHER* [1878 H. 771].

Copyhold Public House—Arbitrary Fine (on Death)—How far Value of License (as distinguished from Business Goodwill) to be included in the Assessment of the Lord's Fine.

The defendant was admitted to a copyhold public-house and premises as devisee in fee simple of her late father. The house and premises had been let by the father (with the lord's license) for a term of 99 years, at a rent of 190*l.* per annum, the lessee paying to the lessor a premium of 5,000*l.*; and the lessee (or his assignee) had sub-let the premises, in four separate parts, at four separate rents amounting in the aggregate to 550*l.*,—receiving also (in respect of the public-house portion) a very considerable premium. The lease and all the four sub-leases were subsisting at the date of the defendant's admittance. The

lord assessed the fine payable on the defendant's admittance at 2,000*l.*, being twice the annual value at the date of the admittance, if the value of the license was properly included in the assessment.

Held, that the value of the license was properly included, the nature of the house and its position being considered, and there being every human probability of the house (which had had the license for 200 years) continuing to be a licensed house.

In this action, the plaintiff, as lord of the manor of West Ham, in the County of Essex, claimed to recover from the defendant a fine of two years' improved value on her admission on April 29th, 1878, as devisee in fee simple of her late father, to certain copyhold premises (parcel of the manor) consisting of a public-house and premises called the "Swan," situate at Stratford, in the said county. The right of the lord to a fine of two years' improved value in respect of the defendant's admittance was not contested; but the plaintiff claimed that the full annual value was not less than 1,000*l.*; and the defendant alleged that the annual value was only 455*l.*; and she paid into court the sum of 910*l.* accordingly, and pleaded such payment. The action was tried before HUDDLESTON, B., and a special jury, June 13th, 1879.

It appeared that the defendant's father had, under a license from the lord (for which he had paid a small fine), demised the premises (with a small piece of freehold land adjoining) for a term of 99 years at a rent of 190*l.* per annum, from Michaelmas, 1867, the lessee paying to the lessor a premium of 5,000*l.* for the lease. And it further appeared, that the lessee (or his assignee) had afterwards sub-let the demised premises in four separate portions, and by four separate under-leases,—one portion being let to the London General Omnibus Company, at a rent of 150*l.* per annum; another portion being let to the North Metropolitan Tramways Company, at a rent of 135*l.* per annum; another portion being let to a coffee-house keeper, at a rent originally of 25*l.* and afterwards of 65*l.* per annum; and the residue of the premises (with the small piece of freehold land adjoining), and

which residue was the "Swan" public-house properly so called, being let at a rent of 190*l.* per annum, the under-lessee of the "Swan" paying also a very considerable premium to the under-lessee for the sub-lease. And at the date of the defendant's admittance, the aggregate rental of the demised premises was (and continued to be) 540*l.*, irrespectively of the premium paid by the sub-lessee of the public-house; but the defendant was entitled, of course, only to the rent of 190*l.*, reserved by the original lease, during all the continuance of such lease.

It was admitted, that the aggregate rental of 540*l.*, although some evidence of the improved value, was not conclusive evidence (a); and expert witnesses were called on behalf of the plaintiff, and also on behalf of the defendant, to prove the true value; but the witnesses on both sides (allowing for the usual bias) were practically agreed as to the value, *subject only to the question as to the value of the license being or not included*; and in the result, the jury found, that the portion of the premises sublet to the General Omnibus Company was of the annual value of 165*l.*, some stabling having been erected by the company thereon; and that the portion let to the Tramways Company was of the annual value of 225*l.*, considerable stabling having been erected by that company thereon; and that the portion let for a coffee house was of the annual value of 60*l.*; and that the residue of the premises, being the "Swan" public-house properly so called, was of the annual value of 550*l.*, if the license was included; and was of the annual value of 150*l.*, if the license was not included,—the difference of 400*l.* being the value in respect of the license; and in arriving at these values, the due deduction was made for or in respect of the small piece of freehold land adjoining which was comprised in the lease.

MARRIOTT, Q.C., and DIGBY for the plaintiff.

MEADOWS WHITE, Q.C., and BARNARD for the defendant.

It was contended for the plaintiff, that the license should be included; and for the defendant, that it should be excluded (b).

(a) *Lord Verulam v. Howard* (1831), 7 Bing. 327.

(b) *Halton v. Hassell* (1736), 2 Str. 1042; *Lord Verulam v. Howard*, *supra*.

HUDDLESTON, B., directed the jury, that they should look at all the circumstances of the case, to see if the improved value put upon the premises by the plaintiff was reasonable; and in particular, that, as regards the "Swan" public-house, they should take that part of the premises as it stood, with all its advantages of position and of accommodation, *and should also take into their consideration the license which the public-house had and enjoyed, the evidence showing that the house must continue to be occupied as a public-house and for no other purpose*; and upon that direction, the jury found that the annual value of the premises was 1,000*l.*; and they gave the plaintiff a verdict for 2,000*l.* accordingly.

On June 20th, 1879, Mr. Meadows White, Q.C., moved in the Divisional Court for a new trial, on the ground of misdirection, contending that the judge's direction to include the license was wrong; or, at all events, that the judge was wrong in not directing the jury at the same time to allow for the contingency of the premises ceasing to have the license; but the Court refused the rule.

KELLY, L.C.B.: "I think it would have been a misdirection, if the learned judge had failed to say to the jury, that they were to take into consideration the present value of the house, licensed as it was and licensed as it had been for a great many years; but, undoubtedly, the jury should also take into their consideration the possibility of the house ceasing to be a licensed house, and the jury would have to consider whether that possibility was a probability; but they had in fact done so,—and the judge's direction was consistent with that."

HAWKINS, J.: "I cannot think that the license should be excluded in considering the value; for in practice (c), when assessing the value of the house, as between the landlord and a railway company, I have never known a case in which the license was excluded from the consideration of value."

(c) *Bourne v. Liverpool (Corporation)*. (1863), 33 L. J. Q. B. 15.

On June 25th, 1879, the defendant appealed to the Court of Appeal, his counsel defining the question as being this, namely:—Whether, *as between the lord of the manor and the copyhold tenant*, the two years' value of the tenement did not mean the value of the tenement properly so called, excluding the value of the license?

In the course of the argument, the judges interposed the following observations:—

BRAMWELL, L.J.: "Supposing the public-house had been a boot and shoe shop, would not its value as such have been properly taken into account; and if so, *its potential shoe-shop value* would be properly taken into account? Is not the right to the license inherent in these premises?"

COTTON, L.J.: "Is not the 550*l.* the value of the property regarded as a house *in a position suited for a public-house, and almost certain to keep the license?*"

In the result, the Court refused the rule.

BRAMWELL, L.J.: "It is perfectly plain, that the premises would let for 550*l.*, irrespectively of the goodwill attaching to them; and the reason they would let for that sum is, because they have,—and will continue, if properly conducted, to have,—a license; and it seems to me, therefore, that that is their annual value."

BRETT, L.J.: "It is not now attempted to alter the perfectly well settled rule, that the fine to be paid to the lord shall be twice the annual value of the premises at the time of the admittance. The question only is, What is the annual value of the premises? Now it has been settled for years, that the annual value of the premises is the amount at which they will let from year to year; and in all questions with regard to public-houses, it is the established and uniform practice of the valuers, that, in estimating the rent from year to year which a tenant would give, the premises are not to be regarded merely as a house, but are to be regarded as a public-house,—that is, as a house capable of having (and, if it has, as a house having) a license. In every case (as Mr. White admitted), except this case of the lord's fine,

the very same legal proposition is to be put; and I cannot conceive why the annual value, *as between the lord and the copyholder*, should require to be arrived at in any different way than the well-recognised and constantly practised mode for arriving at the rent from year to year, which is the annual value, in all other cases.

COTTON, L.J.: I am of opinion, that, in ascertaining the amount of the fine, every circumstance of value fairly applicable to the value of the house ought to be taken into consideration,—that is to say, the position of the house must be taken into account; and also the fact, that the house is used as a public-house, and has got a license as a public-house; and that (from its position and from having been so long used as a public-house) it is almost certain, that the occupier will get the license for it continued. That is, I understand, what the 400*l.* was in respect of—namely, *the house in that position; a house which has been used as a public-house, and which, in all probability, will continue to be used as a public-house.*” *

Solicitors: MARKBY, WILDE, & BURRA: CHILD & Co.

* *Ex relatione* Archibald Brown, Esq., Barrister-at-Law, Middle Temple, from the Shorthand Note.

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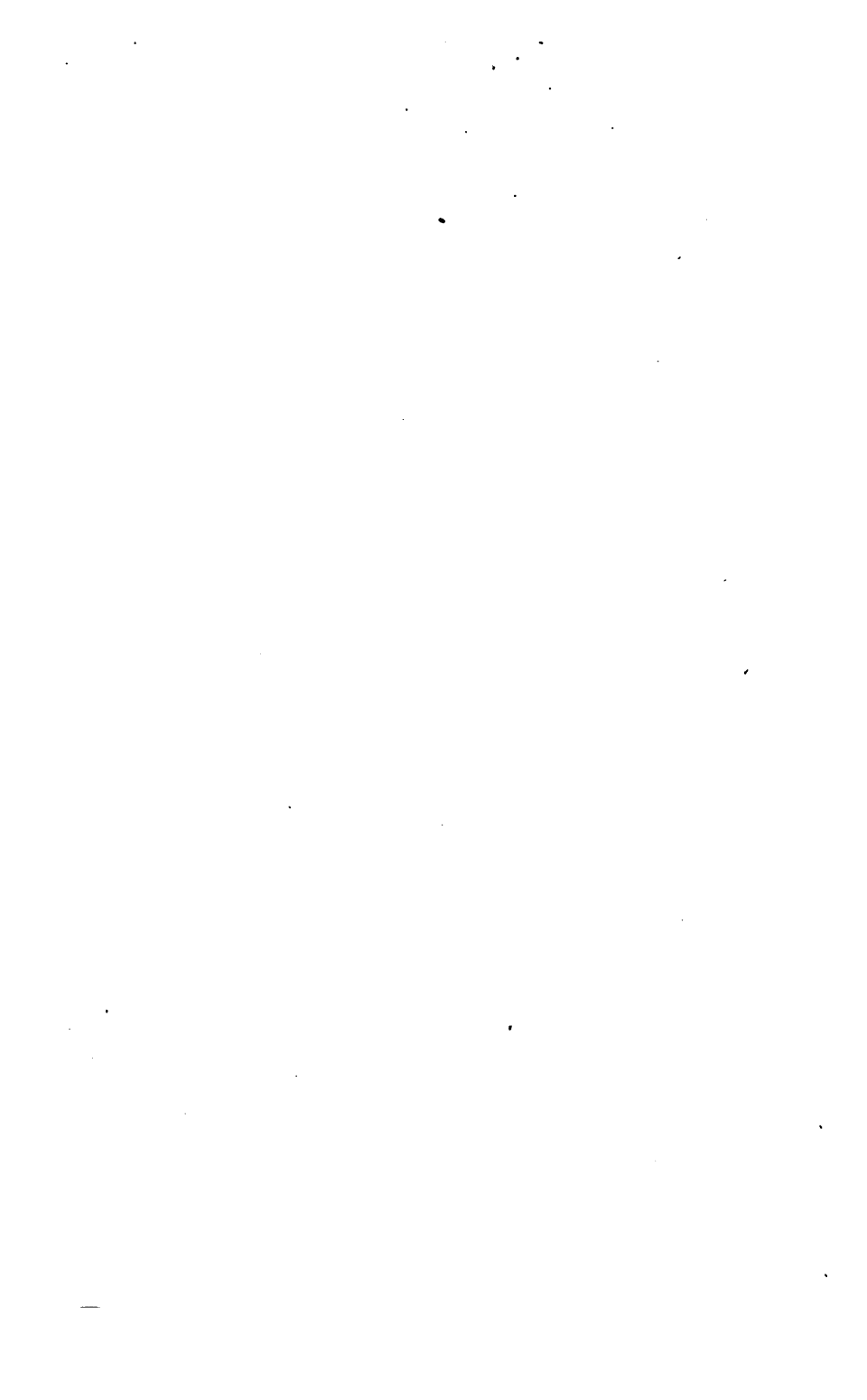
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